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No. 12396

United States
Court of Appeals
For the Ninth Circuit.

WARREN H. PILLSBURY, as Deputy Commissioner, 13th Compensation District, Bureau of Employees Compensation, Federal Security Agency,

Appellant,

vs.

LIBERTY MUTUAL INSURANCE COMPANY, a Corporation, CONTRACTORS, PACIFIC NAVAL AIR BASES, PACIFIC BRIDGE COMPANY, UNITED STATES FIDELITY & GUARANTY CO., a Corporation, and BUILDERS, PEARL HARBOR DRY DOCK No. 4,

Appellees.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED

FEB 2 - 1950

PAUL P. O'BRIEN

No. 12396

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WARREN H. PILLSBURY, as Deputy Commissioner, 13th Compensation District, Bureau of Employees Compensation, Federal Security Agency,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Plaintiffs and Defendants.

Trial before the
Honorable Louis E. Goodman, District Judge,
sitting without a jury.

In the District Court of the United States, Northern District of California, Southern Division.

No. 28507G

LIBERTY MUTUAL INSURANCE COMPANY,
a corporation; Contractors, PACIFIC NAVAL
AIR BASES; PACIFIC BRIDGE COM-
PANY; UNITED STATES FIDELITY &
GUARANTY CO., a corporation; and Builders,
PEARL HARBOR DRY DOCK NO. 4,
Plaintiffs,

vs.

WARREN H. PILLSBURY, as Deputy Commis-
sioner, 13th Compensation District, Bureau of
Employees Compensation, Federal Security
Agency; and FRED F. LAIRD,
Defendants.

COMPLAINT FOR INJUNCTION

Plaintiffs complain of defendants and for cause of action allege:

I.

Jurisdiction is founded on the existence of a question arising under Title 33, U.S. Code, Sec. 921, 44 Stat. 1436, as amended, 49 Stat. 1921; and under Naval Bases Act, Act of Congress, August 16, 1941, as amended by the Act of Congress of December 2, 1942.

II.

On or about December 2, 1941, defendant Laird was injured on Johnson Island while employed by plaintiff Contractors, Pacific Naval Air Bases, for whom plaintiff Liberty Mutual Insurance Company was the compensation carrier. Said injury was thereafter aggravated and the disability increased as the result of an injury to said defendant's back, on or about January 13, 1942, while said defendant was employed as a carpenter by plaintiff Builders, Pearl Harbor Dock No. 4, for whom plaintiff United States Fidelity & Guaranty Co. was the compensation carrier.

III.

Said defendant Laird filed separate claims for compensation against plaintiffs, which said claims were consolidated for hearing before Defendant Pillsbury. On November 4, 1942, defendant Pillsbury issued two separate compensation orders, finding that Laird sustained injury arising out of and in the course of his employment on December 2, 1941; that the injury of January 13, 1942, aggravated and increased the disabling condition; that the compensation and medical expense for disability after January 13, 1942, should be shared equally between plaintiff employers or their insurance carriers. An award was made against each employer for half the compensation. The compensation rate was \$12.50 per week from each employer, which is

one-half the maximum prescribed by the Longshoremen's and Harbor Workers' Compensation Act.

IV.

Plaintiffs continuously paid said awards until \$3750 had been paid under each award, or a total of \$7500 paid. Thereupon, pursuant to 33 U.S.C.A. Sec. 914. (m) which provides that

“The total amount payable under this Act for injury or death shall in no event exceed the sum of \$7500.00.”

the plaintiffs, on or about October 29, 1948, filed with defendant Pillsbury their petitions to terminate liability under the aforesaid orders and awards of November 4, 1942.

V.

On or about December 1, 1948, defendant Pillsbury duly denied the plaintiffs' said petitions to terminate said liability. This complaint is filed within thirty days of said order, pursuant to 33 U.S. Code, Section 921(2).

VI.

Copies of defendant Pillsbury's said orders of December 1, 1948, are annexed hereto and marked Exhibits “A” and “B”.

VII.

Plaintiffs contend that the said orders of said defendant are not in accord with the law and are beyond the jurisdiction of said defendant, in that the

\$7500 maximum applies to all awards to a single claimant, under the Act, regardless of how many employers or injuries are involved, especially where the two injuries are closely connected in time and result in a single disability for which liability is apportioned.

Wherefore, Plaintiffs demand that:

1. Defendants be enjoined by appropriate process to show cause why a permanent injunction should not be granted to restrain defendants from enforcing said orders and awards;

2. The judgment of this Court establish that the plaintiffs have no further liability to defendant Laird, the maximum liability of \$7500.00 having been already paid.

3. Such other relief as shall be proper, be awarded.

TIPTON & WEINGAND,
SYRIL S. TIPTON,
CLAUDE F. WEINGAND,

By /s/ CLAUDE F. WEINGAND,
Attorneys for Plaintiffs.

[Endorsed]: Filed December 22, 1948.

[Title of District Court and Cause.]

MOTION OF DEPUTY COMMISSIONER
TO DISMISS COMPLAINT

Now comes the defendant Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District of the Bureau of Employees' Compensation, by his attorney, Frank J. Hennessy, United States Attorney for the Northern District of California, and moves this Honorable Court to dismiss the Complaint after review of the Compensation Order filed herein, for the following reasons:

1. That the Complaint filed herein does not state a cause of action and does not entitle plaintiffs to any relief, nor does said Complaint state a claim against the defendant, Warren H. Pillsbury, Deputy Commissioner, upon which relief can be granted.

2. That it appears from the Complaint, including the transcripts of testimony taken before the Deputy Commissioner on file herein, that the findings of fact the Deputy Commissioner in the Compensation Orders filed by him on November 4, 1942 and December 1, 1948, complained of in the Complaint, were supported by evidence and under the law said findings of fact should be regarded as final and conclusive.

3. That it appears from the Complaint, including said transcripts of testimony, that said Compen-

sation Orders complained of herein are in all respects in accordance with law.

4. For such other good and sufficient reasons as may be shown.

FRANK J. HENNESSY,
United States Attorney,

By /s/ DANIEL C. DEASY,
Assistant United States Attorney, Attorneys for
Defendant Warren H. Pillsbury, Deputy Commissioner.

[Endorsed]: Filed April 22, 1949.

District Court of the United States, Northern District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 9th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable LOUIS E. GOODMAN,
District Judge.

[Title of Cause.]

ORDERED JUDGMENT FOR PLAINTIFF

Ordered that judgment be entered for plaintiff as will more fully appear in a signed opinion and order this day filed.

[Title of District Court and Cause.]

OPINION AND ORDER

Goodman, District Judge.

This is a proceeding to set aside an order of the Deputy Commissioner refusing to terminate compensation awarded under the Longshoremen's and Harbor Workers' Compensation Act (33 USC §901 et seq.) as made applicable to persons employed at certain defense bases by the Naval Bases Act of August 16, 1941 (42 USC §§1651-1654).

Plaintiff employers and their respective insurance carriers had petitioned the Deputy Commissioner to terminate compensation payments on the ground that defendant Laird had been paid the \$7,500 maximum compensation allowable under the Act. Section 14m of the Act (33 USC 914m) provides that "the total compensation payable under this Act for injury or death shall in no event exceed the sum of \$7,500."¹ The Deputy Commissioner interpreted this section to mean that \$7,500 is the maximum compensation for each separate injury. He found that Laird's disability was the result of

¹In two Circuits it has been held that compensation for injury and compensation for death are independent awards, and that under Section 14m, there is a \$7,500 limit on death benefits and another \$7,500 limit on compensation for injury. See *Norton v. Travelers Insurance Co.* 105 F.2d 122 (3 Cir. 1939); *International Mercantile Marine Co. v. Lowe*, 93 F.2d 663 (2 Cir. 1938).

two injuries and ordered that payments continue.

Both sides seem to be in agreement that, in order to resolve this controversy, the Court must decide whether Section 14m states the maximum compensation an employee can receive for each separate injury or, as the plaintiffs urge, the maximum he may receive for all injuries in the course of his industrial life.² But the Court need not reach this question under the facts of this case. Whether the employee actually had more than one injury is the true issue upon which the cause can and should justly be determined.

On December 2, 1941, Laird was employed as a carpenter at Johnston Island, in the Pacific, by Pacific Naval Air Bases. While aiding other workmen in lifting a steel derrick, Laird felt a sudden sharp pain in his back. Though he immediately ceased lifting the derrick, the pain continued and he was unable to return to his work. For several days he was given heat treatments, and then, because the pain in his back prevented him from working, he was given leave to go to Honolulu in order to obtain a pair of eye glasses he had needed for some time. Laird arrived in Honolulu on December 10, and on December 13, he reported for transportation back to Johnston Island. He was then informed he was to be loaned to Pearl Harbor Dry

²Section 14 m was completely revised by the Act of June 24, 1948 (62 Stat. 603) and the issue here tendered could not now arise. This case, however, is governed by Section 14m as it read in 1942.

Dock No. 4, whose predecessor was the Pacific Bridge Company, for work in Honolulu. That same day he began work with Pearl Harbor Dry Dock. He continued to work regularly, although, as he testified at the hearings before the Deputy Commissioner, "not steadily" in that he took off work whenever possible to rest his back which still troubled him. On January 13, for the first time since December 2, he attempted to engage in a lifting operation. As he assisted in turning over a concrete form, his foot slipped in some grease and he was immediately seized with severe pain in his back and down his right leg. Later in the day he was examined by a physician who decided he had suffered a rupture of some sort and recommended that he be returned to the mainland for treatment. Laird continued to work as best he could until January 28. About the first of February he sailed for the United States. After his arrival in California, he did no work for about a month. From March 30 until June 4 he performed light work on the assembly line at Northrup Aviation. His back continued to cause him extreme discomfort and, during this period, he was absent from work a total of almost three weeks. On June 3, he was examined by his own physician who found a rupture of an intervertebral disc in his back. The ruptured disc was surgically removed on July 9. After the operation Laird improved. The pain in his leg ceased, but his back remained weak and continued to pain him at times.

On November 4, 1942, after several hearings, the

Deputy Commissioner ordered Pacific Naval Air Bases to compensate Laird for the week's disability following the first back strain. He found that the periods of partial and total disability following the second back strain and the existing total disability were the joint result of two injuries, and ordered that weekly compensation, which had accrued and which would subsequently fall due, should be divided equally between the two employers. When the insurance carriers of the two employers had jointly paid \$7,500, they petitioned for an order terminating compensation. The petition was denied and this proceeding followed.

Although Section 14m may be ambiguous on its face, it is clear that if it is to have any force at all, it must at least limit to \$7,500 the compensation payable for disability resulting from a specific damage to a particular body part. When bodily damage is attributed to an occupational disease (an occupational disease being considered an injury under the Act), many, if not innumerable physical events, may be in the stream of causation. But to interpret Section 14m to mean that the maximum compensation stated should be multiplied by the number of events contributing to the disease would be completely unreasonable. It is equally so when the bodily damage is of traumatic origin, even though in the latter case, the events contributing to the damage may be more discernibly separable.

Dr. Mark A. Glaser who examined Laird on September 8, 1942 at the request of plaintiff, Liberty

Mutual Insurance Co., stated in his report that "in view of the history of these two injuries it is further my opinion the first injury caused a beginning weakness of the ligaments supporting the nucleus and the second injury completed the relaxation of the ligaments. These two injuries together resulted in such a relaxation of the ligaments supporting the nucleus that a gradual complete rupture occurred. As a matter of fact a ruptured intravertebral (sic) disc may occur without injury and be due to a degenerative process. I do not see how any surgeon can place the cause of a ruptured intravertebral disc upon either of these injuries to the exclusion of the other when we know these ruptures may occur spontaneously without the history of injury."

The evidence without conflict shows that the rupture of the intervertebral disc was caused by at least two events—two strains, close in point of time. Each strain may have caused distinct bodily harm in the sense that, after each, body cells, theretofore sound were damaged. But the effect of the first strain was still present when the second occurred, and, in the end, the injury was of a unitary nature. Indeed it is doubtful that it would have been otherwise contended, had Laird not had two different employers.

It is my opinion that the Congress did not intend that a workman, disabled by a rupture resulting from a series of strains, should receive more compensation than a workman disabled by a rupture complete, as a result of a single event. Each stress

or strain which plays a part in a single injury cannot be made the basis for increasing the maximum compensation allowable under the Act.

Since the record is clear that the injury was single, there is no legal justification for doubling the maximum award.

The Commissioner was in error in denying the petition to terminate compensation. His order is set aside and it is Ordered that compensation be terminated.

Dated: September 9, 1949.

/s/ LEWIS GOODMAN,
U.S. District Judge.

[Endorsed]: Filed September 9, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Warren H. Pillsbury, as Deputy Commissioner, 13th Compensation District, Bureau of Employees' Compensation, Federal Security Agency, one of the defendants in the above-entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the order of the United States District Court, dated September 9, 1949, setting aside the Compensation Order made by the defendant, Warren H. Pillsbury, as Deputy Commissioner, dated December 1, 1948, and made pursuant to the provisions of Section 21(b) of the Longshoremen's and Harbor

Workers' Compensation Act of March 4, 1927 (44 Stat. 1424) 33 USCA, Section 921 B, as made applicable to persons employed at certain defense bases under certain Public Works Contracts by the Act of August 16, 1941 (55 Stat. 622) USCA, Section 1654, and from the order of the Court denying the defendant's motion to dismiss the complaint for an injunction against defendants, and from the whole of said judgment and each and every part thereof on all questions of law; and the order of the Court filed on September 9, 1949, setting aside the Compensation Order filed by the defendant, Deputy Commissioner, on December 1, 1948.

Dated: November 3, 1949.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ EDGAR R. BONSALE,
Assistant U. S. Attorney,
Attorneys for
Defendants.

[Endorsed]: Filed November 3, 1949.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Defendant, Warren H. Pillsbury, as Deputy Commissioner, hereby designates that the whole of the record, proceedings and evidence be contained in the record on appeal herein, including the certified copy of the transcript of the record and proceedings, before said Warren H. Pillsbury, as Deputy Commissioner, 13th Compensation District, Bureau of Employees Compensation, Federal Security Agency.

Dated: November 2, 1949.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ EDGAR R. BONSALE,
Assistant U. S. Attorney,
Attorneys for
Defendant.

[Endorsed]: Filed November 3, 1949.

Federal Security Agency
Bureau of Employees Compensation
13th Compensation District

Case No. DB-P-1-715

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act as extended by Act of Congress of August 16, 1941 (Defense Bases Act)

FRED F. LAIRD,

Claimant,

against

CONTRACTORS PACIFIC NAVAL AIR
BASES, Employer,

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

CERTIFICATION OF RECORD

This is to certify that I am the duly appointed, qualified and acting Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation under the Longshoremen's and Harbor Workers' Compensation Act and the Defense Bases Compensation Act (Act of Congress of August 16th, 1941) for the Thirteenth Compensation District, comprising the State of California and other portions of the United States:

That there has recently been pending before me as said Deputy Commissioner, a claim for com-

compensation benefits transferred to me under said Acts from the Pacific Compensation District of Fred F. Laird against Contractors Pacific Naval Air Bases, employer and Liberty Mutual Insurance Company, insurance carrier, my file No. DB-P-1-715.

That the attached are originals or true and correct copies of pleadings and decisions in said file, as listed below, being a copy of the entire claim file therein as far as relevant to a review of the above proceeding:

(1) US-203, Employees' Claim for Compensation.

(2) Compensation Order, Award of Compensation, dated November 4th, 1942.

(3) Petition for termination of liability under Compensation Order dated November 4th, 1942.

(4) Order Denying Petition for Termination of Liability and Fixing Attorney's Fee dated December 1st, 1948.

(5) Corrected Order Denying Petition for termination of Liability and Fixing Attorney's Fee dated December 14, 1948.

Given under my hand at San Francisco, California, this 17th day of February, 1949.

/s/ WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:ml

Form US-203

DB-P-1-715

Case No. BA-8

Federal Security Agency
Bureau of Employees' Compensation
Office of Deputy Commissioner
Warren H. Pillsbury

Administering Longshoremen's and Harbor
Workers' Compensation Act

Employee's Claim For Compensation
(To be filed with the Deputy Commissioner
in accordance with sections 13 and 19 of the
law.)

Injured Person

1. Name of employee Fred F. Laird. Employee's check No. 75.
2. Address: Street and No. 608 E 67th Street. City or town Inglewood, Calif.
3. Sex Male. Age 31. Married, single, widowed Married.
4. Do you speak English? yes. Nationality American.
5. State regular occupation Carpenter & Carpenter-Foreman.
6. What were you doing when injured? Carpentering.
7. (a) Wages or average earnings per day, \$11.00 (Include overtime, board, rent, and other

allowances.) (b) Per week, \$84.00. (c) Were you employed elsewhere during week in which you were injured? No. (d) If so, state where and when

8. Were you paid full wages for day of accident?
Yes.

Employer

9. Employer Hawaiian Dredging Company.

10. Office address: Street and No.
City or town Honolulu, T.H.

11. Nature of business Construction.

The Injury

12. Place where injury occurred Near Carpenter Shop, Johnston Isle, T.H.

(Give place and name of vessel.)

13. Name of foreman Leroy Decker.

14. Date of accident or first illness, the 2 day of Dec., 1941, at 11:00 o'clock A.M.

15. How did accident happen or how was occupational disease caused? Lifting Steel Derrick.

Nature and Extent Of Injury

16. State fully nature of injury or occupational disease: Sacro-iliac slip with pain in back across right hip, and down right leg.

17. On what date did you stop work because of injury? December 3, 1941.

18. Have you returned to work? (Yes or No) Yes. If "yes," on what date? Dec. 13, 1941.

19. Does injury keep you from work? (Yes or No) Yes.

20. Have you done any work in period of disability? Yes.

21. Have you received any wages since injury? Yes. If so, from and to what date? From December 13, 1941 to Jan. 28, 1942 from March 30, 1942 to June 3, 1942.

22. Has injury resulted in amputation? no. If so, describe same Operation.

23. Did you request your employer to provide medical attendance? yes. Has he done so? yes.

24. Attending physician: Name Male nurse. Address Johnston Isle, T.H.

25. Hospital: Name..... Address.....

Notice

26. Have you given your employer notice of injury? (Yes or No) yes. When? Dec. 2, 1941.

27. If such notice was given, to whom? Foreman and Male nurse.

28. Was it given orally or in writing? Orally.

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of

my employment and not occasioned solely by intoxication, or by my willful intention, and in support of of it I make the foregoing statement of facts.

/s/ FRED F. LAIRD,
Claimant.

Mail address 608 E. 67th St., Inglewood, Calif., Orchard 7-8023.

Dated: July 30, 1942.

United States Employees' Compensation Commission
13th Compensation District

Case No. DB-P-1-715

In the matter of the claim for compensation under Act of Congress of August 16, 1941 extending the Longshoremen's and Harbor Workers' Compensation Act to employments on certain military, air and naval bases of the United States.

FRED F. LAIRD,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer,

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

COMPENSATION ORDER—AWARD OF
COMPENSATION

Claim for compensation having been filed herein under the Act of Congress of August 16th, 1941 for an injury occurring in the course of an employment on a military, air or naval base of the United States outside the continental United States, in the Pacific Compensation District, and said claim having been transferred to the undersigned Deputy Commissioner, Thirteenth Compensation District,

by the Deputy Commissioner of the said Pacific District at Honolulu, in the Territory of Hawaii, with the approval of the United States Employees' Compensation Commission, and such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

Findings Of Fact

That on the 2nd day of December, 1941, the claimant above named was in the employ of the employer above named for the performance of service at a military base of the United States at Johnston Island, in the Pacific Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as extended by said Act of Congress of August 16th, 1941, and that the liability of the employer for compensation under said Acts was insured by Liberty Mutual Insurance Company;

That on said day claimant herein, while performing service for the employer as a carpenter, sustained personal injury occurring in the course of and arising out of his employment and resulting in disability as follows: While helping with other men to move a steel derrick he strained his back, said injury causing, among other things, a beginning herniation of a nucleus pulposus in the low back;

That notice of injury was given within thirty days after the date of such injury, to the Deputy Commissioner and to the employer;

That the employer furnished claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act;

That the average annual earnings of the claimant herein at the time of his injury exceeded the maximum prescribed by said Act, his actual monthly wages at said time being \$300.00;

That as the result of the injury sustained the claimant was wholly disabled beginning with December 5th to and including December 12th and he is entitled to 1-1/7 weeks compensation, \$25.00 a week, for such disability, amounting to \$28.57;

That claimant returned to Honolulu between December 5th, and December 12th and resumed work at Honolulu for Builders Pearl Harbor Dock No. 4, insured in the United States Fidelity and Guaranty Company. On January 13th, 1942 he sustained further injury to his back while in the employ of said Builders Pearl Harbor Dock No. 4 which aggravated and increased the disabling condition initiated on December 2nd, 1941 at Johnston Island. That compensation and medical expense for disability after January 13th should be shared equally between defendants herein and Builders Pearl Harbor Dry Dock No. 4 and its insurance carrier, United States Fidelity and Guaranty Company. Award is herein made against defendants herein for one half of such compensation as stated below, and

simultaneously in the case of Fred Laird vs. Builders Pearl Harbor Dry Dock No. 4 and the United States Fidelity and Guaranty Company for the remaining 50 per cent of said compensation, said compensation order being made a part hereof;

That since January 13th, 1942 claimant has been disabled from labor by reason of the joint effect of the two injuries mentioned above as follows: (1) Total disability from January 28th, when claimant's wages ceased, to and including March 29th, 1942, 8-4/7 weeks, for which claimant is entitled to compensation at \$25.00 a week, amounting to \$214.28; (2) From March 30th to and including June 15th, less three weeks during which claimant was wholly unable to work on account of said condition, claimant worked at lighter work in California with partial disability at \$36.00 a week. His loss of wage earning capacity during said working period was \$33.23 a week and claimant is entitled to compensation therefor at \$22.15 a week. Compensation accrued during said period of partial disability, 8-1/7 weeks, \$180.36, and for total disability \$75.00, a total of \$255.36;

(3) From June 16th claimant has been wholly disabled indefinitely by reason of said injury. Compensation accrued to the date of the last hearing, October 5th, 1942, 16 weeks at \$25.00 a week, is \$400.00;

That claimant procured one or more operations on his spine by a physician of his own choice after

arriving in California, after notice and opportunity to defendants to provide said surgery, of which they did not avail themselves. That defendants are liable for one-half of the reasonable expense of said treatment, the reasonable amount of such medical expenses to be fixed by further proceedings herein if the parties are unable to agree thereon;

That the entire compensation accrued to the date of the last hearing, October 5th, 1942, assessable against defendants herein is \$463.39. Payments made thereon, \$100.00. Balance due claimant as of said date, \$363.39;

That claimant's attorney, C. L. Blek, has rendered legal service to claimant in the prosecution of his claim, a fee for which is approved in the sum of \$60.00, and he is entitled to a lien therefor upon compensation herein awarded.

Upon the foregoing facts, the Deputy Commissioner makes the following:

Award

That the employer, Contractors Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to the claimant compensation as follows: To claimant the sum of \$363.39 forthwith as of October 5th, 1942, less however, the sum of \$60.00 to be deducted therefrom and paid to claimant's attorney, Mr. C. L. Blek, on his lien for attorney's fee, and the further sum to claimant for \$12.50 a week thereafter until the ter-

mination of his disability or the further order of the Deputy Commissioner.

Given under my hand at San Francisco, California, this 4th day of November, 1942.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:eb/ml

United States Employees' Compensation Commission, 13th Compensation District

Case No. DB-8—Claim No. DB-13

In the matter of the claim, for compensation under Act of Congress of August 16, 1941 extending the Longshoremen's and Harbor Workers' Compensation Act to employments on certain military, air and naval bases of the United States.

FRED F. LAIRD,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR BASES,

Employer,

LIBERTY MUTUAL INSURANCE CO.,

Insurance Carrier.

PETITION FOR TERMINATION OF LIABILITY UNDER COMPENSATION ORDER DATED NOVEMBER 4, 1942

The defendant employer and insurance carrier above named hereby petition for termination of liability under compensation order dated November 4, 1942, for the following reasons and upon the following grounds;

I.

The claimant at present is allegedly suffering (a)

from a disability to his back produced as the result of an injury sustained on the 2nd day of December, 1941, while in the employ of Contractors, PBAB, (Liberty Mutual Insurance Company, compensation insurance carrier) on Johnson Island, which said injury was aggravated and the disability increased as the result of (b) an injury to his back sustained on January 13, 1942, while employed as a carpenter at Pearl Harbor, by Builders, Pearl Harbor, Dock No. 4 (United States Fidelity & Guaranty Company, compensation insurance carrier).

The claimant filed his separate claims for compensation against both employers and their respective carriers and following hearings on said claims, which were consolidated for the purpose of said hearings, the deputy Commissioner issued two separate compensation orders dated November 4, 1942, with respect to both claimed injuries.

(a) In the compensation order in the case of Fred F. Laird vs. Contractors, PNAB, and Liberty Mutual Insurance Company, case No. DB-8, Claim No. DB-13, the Deputy Commissioner found that on December 2, 1941, the claimant sustained personal injury occurring in the course of and arising out of his employment by Contractors, PNAB, on Johnson Island, and further in said compensation order dated November 4, 1942, the Deputy Commissioner found that on January 13, 1942, the said claimant sustained further injury to his back while in the employ of Builders, Pearl Harbor Dock No. 4, which aggravated and increased the disabling con-

dition initiated on December 2, 1941, at Johnson Island; and further in said compensation order November 4, 1942, the Deputy Commissioner found that compensation and medical expense for disability after January 13, 1942 should be shared equally between the defendants, Contractors, PNAB and its compensation insurance carrier, Liberty Mutual Insurance Company. In this same compensation order, November 4, 1942, the Deputy Commissioner made an award against defendants Contractors, PNAB and Liberty Mutual Insurance Company for one-half of such compensation and "simultaneously in the case of Fred Laird vs. Builders, Pearl Harbor Dry Dock No. 4" and its compensation insurance carrier, the United States Fidelity & Guaranty Company" for the remaining 50 per cent of said compensation, such compensation order being made a part hereof."

This award against the defendants, Contractors, PNAB and Liberty Mutual Insurance Company, calls for the payment of \$12.50 a week, which is one-half of the maximum compensation of \$25.00 allowable under the Longshoremen's and Harbor Workers' Act, as amended by the Naval Bases Act.

(b) In the compensation order in the case of Fred F. Laird vs. Builders, Pearl Harbor Dock No. 4, and United States Fidelity and Guaranty Company, case No. DB-8, Claim No. DB-13, the Deputy Commissioner found that on the 13th day of January, 1942, the claimant sustained personal injury occurring in the course of and arising out

of his employment by Builders, Pearl Harbor Dry Dock No. 4.

The Deputy Commissioner further found that said injury of January 13, 1942, aggravated and increased disability from which claimant was already suffering in his back by reason of injury sustained December 2, 1942 at Johnson Island while in the employ of Contractors, PNAB, insured by Liberty Mutual Insurance Company. The Deputy Commissioner further found that the liability for compensation for said condition of claimant's back from and after January 13, 1942 should be borne equally between the defendants, Builders, Pearl Harbor Dry Dock No. 4 and United States Fidelity and Guaranty Company and Contractors, PBAB and Liberty Mutual Insurance Company.

Each of the two compensation orders above referred to has incorporated therein the compensation order issued in the other claim and by reference is made a part thereof.

Pursuant to the provisions of the compensation order, November 4, 1942, against Liberty Mutual Insurance Company, as compensation insurance carrier for Contractors, PNAB, has paid the sum of \$3,750.00 as compensation to the claimant, and pursuant to the award of November 4, 1942, the said United States Fidelity and Guaranty Company, as compensation insurance carrier for Builders, Pearl Harbor Dry Dock No. 4, has likewise paid the sum of \$3,750.00 as compensation to the claimant. Thus, the claimant herein has received

from the two defendant insurance carriers, and in conformity with the provisions of said compensation orders, a total of \$7,500.00, which is the maximum sum payable for injury under the provisions of Section 914 (m) of the Longshoremen's and Harbor Workers' Compensation Act as amended by the Naval Bases Act.

The defendants, Contractors, PNAB and Liberty Mutual Insurance Company therefore pray for a compensation order relieving and releasing said Contractors, PNAB and Liberty Mutual Insurance Company, of and from any further or other liability for the payment of compensation on the ground that the sum of \$7,500.00, the maximum sum allowable under the Federal Act as above cited, has been paid to the claimant for the disability from which he now allegedly suffers as the result of the original injury December 2, 1941 and the aggravating injury of January 13, 1942.

II.

The defendant, Contractors, PNAB and Liberty Mutual Insurance Company, petition for an order terminating liability and disability on the further ground that for a long period of time prior to the date hereof, the claimant has had continued and substantial earnings as the owner and/or proprietor of a vegetable stand and that for a long period of time prior to the date hereof his earnings have been in excess of those which he was earning as of the date of Injury, December 2, 1941.

The defendants petition for termination of liability and disability for the reasons set forth in paragraph 2 hereof, and is based upon Section 922 of the Longshoremen's and Harbor Workers' Compensation, on the ground of a change in conditions.

Dated at Los Angeles, California, October 29, 1948.

Respectfully submitted,

TIPTON & WEINGAND,

By CLAUDE F. WEINGAND,

Attorney for Petitioners.

Federal Security Agency, Bureau of Employees
Compensation, 13th Compensation District

Case No. DB-P-1-715

In the matter of the claim for compensation under
the Acts of Congress of August 16, 1941 and
December 2, 1942, extending the Longshore-
men's and Harbor Workers' Compensation Act.

FRED F. LAIRD,

Claimant,

against

CONTRACTORS, PACIFIC NAVAL AIR
BASES,

Employer,

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

COMPENSATION ORDER

ORDER DENYING PETITION FOR TER- MINATION OF LIABILITY UNDER AWARD AND FIXING ATTORNEY'S FEE

Compensation Order having been entered herein
on November 4th, 1942 and supplemented by an
order of April 16th, 1943 fixing medical expenses,
and by an order of September 16th, 1946 denying
petition for termination of liability, and said orders
having divided the weekly payment of \$25.00 a week
due for claimant's continuing partial disability

between defendants herein and defendants in file DB-P-61-65, Laird vs. Pacific Bridge Company and United States Fidelity & Guaranty Company, employer and insurance carrier at the time of a later injury which increased the disability initiated by claimant's injury herein, and defendants herein having now applied for termination of their liability upon the ground that payments to date by Liberty Mutual Insurance Company and United States Fidelity & Guaranty Company have together exceeded the sum of \$7,500.00, and also upon the ground that claimant is not now suffering any loss of wage earning capacity as a result of his injury of December 2nd, 1941, and hearing having been held thereon and the matter submitted for decision, and the Deputy Commissioner being of opinion that the liability of defendants herein, Contractors Pacific Naval Air Bases and Liberty Mutual Insurance Company, under Section 14(m) of the Longshoremen's and Harbor Workers' Compensation Act extends to a maximum limit of \$7,500.00 for each of claimant's injuries separately and that the payments made by said defendants have not yet reached said sum, and said petition for termination of liability not alleging any change in claimant's physical condition, and the evidence adduced at said hearing having failed to show that claimant's earning capacity has increased since the last preceding order to a sufficient extent to permit reduction of claimant's compensation rate, and it further appearing that claimant's attorney, C. L.

Blek, has rendered legal services to claimant in this case and in case No. DB-P-61-65 since the entry of the last preceding order for which a fee is requested and that a fee should be approved in the sum of \$100.00 to be divided equally between said two injuries and that a lien should be granted herein for the sum of \$50.00 against compensation due from defendant, Liberty Mutual Insurance Company.

It Is Hereby Ordered that the petition herein for termination of defendant's liability be and the same is hereby Denied and that defendants pay to claimant's attorney, C. L. Blek, upon his lien for attorney's fee, the sum of \$50.00, deducting the same from compensation payments due claimant herein.

Given under my hand at San Francisco, California, this 1st day of December, 1948.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:el/ml

Federal Security Agency, Bureau of Employees
Compensation, 13th Compensation District

Case No. DB-P-1-715

In the matter of the claim for compensation under
the Acts of Congress of August 16, 1941 and
December 2, 1942, extending the Longshore-
men's and Harbor Workers' Compensation Act.

FRED F. LAIRD,

Claimant,

against

BUILDERS PEARL HARBOR, DOCK #4,
Employer,

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

COMPENSATION ORDER—ORDER DENYING
PETITION FOR TERMINATION OF LIA-
BILITY UNDER AWARD AND FIXING
ATTORNEY'S FEE. (Corrected)

Compensation Order having been entered herein
on November 4th, 1942 and supplemented by an
order of April 16th, 1943 fixing medical expenses,
and by an order of September 16th, 1946 denying
petition for termination of liability, and said orders
having divided the weekly payment of \$25.00 a week
due for claimant's continuing partial disability be-
tween defendants herein and defendants in file DB-
P-61-65, Laird vs. Pacific Bridge Company and
United States Fidelity & Guaranty Company, em-

ployer and insurance carrier at the time of a later injury which increased the disability initiated by claimant's injury herein, and defendants herein having now applied for termination of their liability upon the ground that payments to date by Liberty Mutual Insurance Company and United States Fidelity & Guaranty Company have together exceeded the sum of \$7,500.00, and also upon the ground that claimant is not now suffering any loss of wage earning capacity as a result of his injury of December 2nd, 1941, and hearing having been held thereon and the matter submitted for decision, and the Deputy Commissioner being of opinion that the liability of defendants herein, Builders Pearl Harbor, Dock #4 and Liberty Mutual Insurance Company, under Section 14(m) of the Longshoremen's and Harbor Workers' Compensation Act extends to a maximum limit of \$7,500.00 for each of claimant's injuries separately and that the payments made by said defendants have not yet reached said sum, and said petition for termination of liability not alleging any change in claimant's physical condition, and the evidence adduced at said hearing having failed to show that claimant's earning capacity has increased since the last preceding order to a sufficient extent to permit reduction of claimant's compensation rate, and it further appearing that claimant's attorney, C. L. Blek, has rendered legal services to claimant in this case and in case No. DB-P-61-65 since the entry of the last preceding order for which a fee is requested and that a fee

should be approved in the sum of \$100.00 to be divided equally between said two injuries and that a lien should be granted herein for the sum of \$50.00 against compensation due from defendant, Liberty Mutual Insurance Company.

It Is Hereby Ordered that the petition herein for termination of defendant's liability be and the same is hereby Denied and that defendants pay to claimant's attorney, C. L. Blek, upon his lien for attorney's fee, the sum of \$50.00 deducting the same from compensation payments due claimant herein.

Given under my hand at San Francisco, California, this 14th day of December, 1948.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:el/ml/s

Federal Security Agency, Bureau of Employees
Compensation, 13th Compensation District

Case No. DB-P-61-65

In the matter of the claim for compensation under
the Longshoremen's and Harbor Workers' Com-
pensation Act as extended by Act of Congress
of August 16, 1941 (Defense Bases Act).

FRED F. LAIRD,

Claimant,

against

PACIFIC BRIDGE COMPANY,

Employer,

U. S. FIDELITY AND GUARANTY COMPANY,
Insurance Carrier.

CERTIFICATION OF RECORD

This is to certify that I am the duly appointed,
qualified and acting Deputy Commissioner of the
Federal Security Agency, Bureau of Employees'
Compensation under the Longshoremen's and Har-
bor Workers' Compensation Act and the Defense
Bases Compensation Act (Act of Congress of Au-
gust 16th, 1941) for the Thirteenth Compensation
District, comprising the State of California and
other portions of the United States:

That there has recently been pending before me
as said Deputy Commissioner, a claim for compen-
sation benefits transferred to me under said Acts

from the Pacific Compensation District of Fred F. Laird against Pacific Bridge Company, employer and United States Fidelity and Guaranty Company, insurance carrier, my file No. DB-P-61-65.

That the attached are originals or true and correct copies of pleadings and decisions in said file, as listed below, being a copy of the entire claim file therein as far as relevant to a review of the above proceeding:

- (1) US-203, Employees' Claim for Compensation
- (2) Compensation Order, Award of Compensation, dated November 4th, 1942
- (3) Petition for termination of Liability under Compensation Order dated November 4th, 1942
- (4) Order Denying Petition for Termination of Liability and Fixing Attorney's Fee dated December 1st, 1948

Given under my hand at San Francisco, California, this 17th day of February, 1949.

/s/ WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:ml

Form US-203

Federal Security Agency
Bureau of Employees' Compensation

Office of Deputy Commissioner Warren H. Pillsbury
Administering Longshoremen's and Harbor
Workers' Compensation Act

BP. 61-65

Case No. DB-8B

Employee's Claim for Compensation

(To be filed with the Deputy Commissioner
in accordance with sections 13 and 19 of the
law)

INJURED PERSON

1. Name of employee: Fred F. Laird, Employee's check No. 943.
2. Address: Street and No., 608 E. 67 St. City or town: Englewood, Calif.
3. Sex: Male. Age: 31. Married, single, widower: Married.
4. Do you speak English? Yes. Nationality: American.
5. State regular occupation: Carpenter Foreman.
6. What were you doing when injured? Carpentering.
7. (a) Wages or average earnings per day, \$16.37.5 (include overtime, board, rent, and other

allowances.) (b) Per week, \$114.62. (c) Were you employed elsewhere during week in which you were injured? No. (d) If so, state where and when:

8. Were you paid full wages for day of accident?
Yes.

EMPLOYER

9. Employer: Pacific Bridge Company.

10. Office address: Street and No., Pearl Harbor.
City or town: Honolulu, T. H.

11. Nature of business: Construction Dry Dock
#4.

THE INJURY

12. Place where injury occurred: Near Dry Dock
#4.

13. Name of foreman: Fred Toft, Supt.

14. Date of accident or second illness, the 13th
day of January, 1942, at 9 o'clock a.m.

15. How did accident happen or how was occupa-
tional disease caused? Lifting cement form.

NATURE AND EXTENT OF INJURY

16. State fully nature of injury or occupational
disease: Pain in back, across right hip and down
right leg.

17. On what date did you stop work because of
injury? January 28, 1942.

18. Have you returned to work? (Yes or No): Yes. If "yes," on what date? March 30, 1942.

19. Does injury keep you from work? (Yes or No): Yes.

20. Have you done any work in period of disability? Yes.

21. Have you received any wages since injury? Yes. If so, from and to what date? Jan. 13, to January 28, 1942. From March 30, to June 3, 1942.

22. Has injury resulted in amputation? No. If so, describe same: Operation.

23. Did you request your employer to provide medical attendance? Yes. Has he done so? Yes.

24. Attending physician: Name, Alsup Clinic. Address, Honolulu, T. H.

NOTICE

26. Have you given your employer notice of injury? (Yes or No) Yes. When? Jan. 13, 1942.

27. If such notice was given, to whom? Time Keeper.

28. Was it given orally or in writing? Orally.

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxi-

cation, or by my willful intention, and in support of it I make the foregoing statement of facts.

Dated July 30, 1942.

Filed 8/8/42.

/s/ FRED F. LAIRD,
Claimant.

Mail address: 608 E 67th St., Inglewood, Calif.,
Phone OR. 7-8023.

United States Employees' Compensation Commission, 13th Compensation District

Case No. DB-8—Claim No. DB-13

DB-P-61-65

In the matter of the claim for compensation under the Act of Congress of August 16, 1941 extending the Longshoremen's and Harbor Workers' Compensation Act to employments on certain military, air and naval bases of the United States.

FRED F. LAIRD,

Claimant,

against

BUILDERS, PEARL HARBOR DOCK NO. 4,

Employer,

UNITED STATES FIDELITY AND GUARANTY COMPANY,

Insurance Carrier.

COMPENSATION ORDER—AWARD OF
COMPENSATION

Claim for compensation having been filed herein under the Act of Congress of August 16th, 1941 for an injury occurring in the course of an employment on a military, air or naval base of the United States outside the continental United States, in the Pacific Compensation District, and said claim having been

transferred to the undersigned Deputy Commissioner, Thirteenth Compensation District, by the Deputy Commissioner of said Pacific District at Honolulu, in the Territory of Hawaii, with the approval of the United States Employees' Compensation Commission, and such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

Findings of Fact

That on the 13th day of January, 1942, the claimant above named was in the employ of the employer above named for the performance of service at a military base of the United States at Pearl Harbor in the Territory of Hawaii, in the Pacific Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as extended by said Act of Congress of August 16th, 1941, and that the liability of the employer for compensation under said Acts was insured by United States Fidelity and Guaranty Company;

That on said day claimant herein, while performing service as a carpenter for defendant Pearl Harbor Dry Dock No. 4, sustained personal injury occurring in the course of and arising out of his employment and resulting in disability as follows: While attempting to turn over certain forms and in lifting a form, claimant's foot slipped on some

grease, causing him to sustain a strain of the back. Said strain aggravated and increased disability from which claimant was already suffering in his back, consisting of an incipient herniation of a nucleus pulposus of the lower spinal column which claimant had sustained by injury of December 2nd, 1942 at Johnston Island while in the employ of Contractors, Pacific Naval Air Bases, insured against liability under said Acts in Liberty Mutual Insurance Company. That the liability for compensation for said condition of claimant's back from and after January 13th, 1942 should be apportioned equally between defendants herein and the defendants in said proceeding mentioned above. The compensation order therein is incorporated in this compensation order by this reference and made a part hereof;

That notice of injury was given within thirty days after the date of such injury, to the Deputy Commissioner and to the employer;

That the employer furnished claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act, until claimant's return to California. After arriving in California claimant procured one or more operations on his spine by a physician of his own choice, after notice and opportunity to defendants to provide said surgery, of which they did not avail themselves. That defendants are liable for one-half the reasonable amount of claimant's medical expenses, to be fixed by further proceedings herein if the parties are unable to agree thereon;

That the average annual earnings of the claimant herein exceeded the maximum sum prescribed by said Act of \$1950.00, claimant's actual wages being \$100 a week;

That as a result of his injury sustained claimant was wholly disabled, beginning with January 28th, 1942, when his wages ceased, to and including March 29th, 1942, 8-4/7 weeks, for which claimant is entitled to compensation at \$25.00 a week, amounting to \$214.28;

That from March 30th to and including June 15th, less 3 weeks during which claimant was wholly unable to work because of said disability claimant worked with partial disability at lighter work in California at \$36.00 a week. His loss of wage earning capacity during said period was \$64.00. That claimant is entitled to compensation therefor at \$25.00 a week. Compensation accrued during said period of partial disability, 8-1/7 weeks, is \$203.57, which, with the 3 weeks period of total disability mentioned above, \$25.00 a week, makes a total of \$278.57;

From June 16 claimant has been wholly disabled indefinitely by reason of said injury. Compensation accrued to the date of the last hearing, October 5th, 1942, 16 weeks at \$25.00 a week, is \$400.00.

That the entire compensation accrued to the date of the last hearing, October 5th, 1942, assessable against defendants herein, is \$446.42. Payments thereon, \$100.00. Balance due as of said date \$346.42;

That claimant's attorney, C. L. Blek, has rendered legal service to claimant in the prosecution of his claim, a fee for which is approved in the sum of \$60.00, and he is entitled to lien therefor upon compensation herein awarded.

Upon the foregoing facts, the Deputy Commissioner makes the following:

Award

That the employer, Builders, Pearl Harbor Dry Dock No. 4, and the insurance carrier, United States Fidelity and Guaranty Company, shall pay to the claimant compensation as follows: The sum of \$346.42 forthwith as of October 5th, 1942, less, however, the sum of \$60.00 to be deducted therefrom and paid to claimant's attorney, C. L. Blek, upon his lien for attorney's fee.

To claimant the further sum of \$12.50 per week, payable each two weeks beginning with October 6th, 1942, and payable at said rate until the further order of the Deputy Commissioner.

Given under my hand at San Francisco, California, this 4th day of November, 1942.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:EB

United States Employers' Compensation Commission,
13th Compensation District

(Copy)

Case No. DB-8—Claim No. DB-13

In the matter of the claim for compensation under Act of Congress of August 16, 1941 extending the Longshoremen's and Harbor Workers' Compensation Act to employments on certain military, air and naval bases of the United States.

FRED F. LAIRD,

Claimant,

against

BUILDERS, PEARL HARBOR DOCK NO. 4,

Employer,

UNITED STATES FIDELITY & GUARANTY
COMPANY,

Insurance Carrier.

PETITION FOR TERMINATION OF LIABILITY UNDER COMPENSATION ORDER DATED NOVEMBER 4, 1942

The defendant employer and insurance carrier above named hereby petition for termination of liability under compensation order dated November 4, 1942, for the following reasons and upon the following grounds:

I.

The claimant at present is allegedly suffering (a) from a disability to his back produced as the result

of an injury sustained on the 2nd day of December, 1941, while in the employ of Contractors, PNAB, (Liberty Mutual Insurance Company, compensation insurance carrier) on Johnson Island, which said injury was aggravated and the disability increased as the result of (b) an injury to his back sustained on January 13, 1942, while employed as a carpenter at Pearl Harbor, by Builders, Pearl Harbor Dock No. 4 (United Fidelity & Guaranty Company, compensation insurance carrier).

The claimant filed his separate claims for compensation against both employers and their respective carriers and following hearings on said claims, which were consolidated for the purpose of said hearings, the Deputy Commissioner issued two separate compensation orders dated November 4, 1948, with respect to both claimed injuries.

(a) In the compensation order in the case of Fred F. Laird vs Contractors, PNAB, and Liberty Mutual Insurance Company, case No. DB-8, Claim No. DB-13, the Deputy Commissioner found that on December 2, 1941, the claimant sustained personal injury occurring in the course of and arising out of his employment by Contractors, PNAB, on Johnson Island, and further in said compensation order dated November 4, 1942, the Deputy Commissioner found that on January 13, 1942, the said claimant sustained further injury to his back while in the employ of Builders, Pearl Harbor Dock No. 4, which aggravated and increased the disabling condition initiated on December 2, 1941, at Johnson

Island; and further in said compensation order November 4, 1942, the Deputy Commissioner found that compensation and medical expense for disability after January 13, 1942 should be shared equally between the defendants, Contractors, PNAB and its compensation insurance carrier, Liberty Mutual Insurance Company. In this same compensation order, November 4, 1942, the Deputy Commissioner made an award against defendants Contractors, PNAB and Liberty Mutual Insurance Company for one-half of such compensation and "simultaneously in the case of Fred Laird vs Builders, Pearl Harbor Dry Dock No. 4" and its compensation insurance carrier, the United States Fidelity & Guaranty Company "for the remaining 50 per cent of said compensation, such compensation order being made a part hereof."

This award against the defendants, Contractors, PNAB and Liberty Mutual Insurance Company, calls for the payment of \$12.50 a week, which is one-half of the maximum compensation of \$25.00 allowable under the Longshoremen's and Harbor Workers' Act, as amended by the Naval Bases Act.

(b) In the compensation order in the case of Fred F. Laird vs Builders, Pearl Harbor Dock No. 4, and United States Fidelity and Guaranty Company, case No. DB-8, Claim No. DB-13, the Deputy Commissioner found that on the 13th day of January, 1942, the claimant sustained personal injury occurring in the course of and arising out of his employment by Builders, Pearl Harbor Dry Dock No. 4.

The Deputy Commissioner further found that said injury of January 13, 1942, aggravated and increased disability from which claimant was already suffering in his back by reason of injury sustained December 2, 1942 at Johnson Island while in the employ of Contractors, PNAB, insured by Liberty Mutual Insurance Company. The Deputy Commissioner further found that the liability for compensation for said condition of claimant's back from and after January 13, 1942 should be borne equally between the defendants, Builders, Pearl Harbor Dry Dock No. 4 and United States Fidelity and Guaranty Company and Contractors, PNAB and Liberty Mutual Insurance Company.

Each of the two compensation orders above referred to has incorporated therein the compensation order issued in the other claim and by reference is made a part thereof.

Pursuant to the provisions of the compensation order, November 4, 1942, against Liberty Mutual Insurance Company, as compensation insurance carrier for Contractors, PNAB, has paid the sum of \$3,750.00 as compensation to the claimant, and pursuant to the award of November 4, 1942, the said United States Fidelity and Guaranty Company, as compensation insurance carrier for Builders, Pearl Harbor Dry Dock No. 4. has likewise paid the sum of \$3,750.00 as compensation to the claimant. Thus, the claimant herein has received from the two defendant insurance carriers, and in conformity with the provisions of said compensation

orders, a total of \$7,500.00 which is the maximum sum payable for injury under the provisions of Section 914 (m) of the Longshoremen's and Harbor Workers' Compensation Act as amended by the Naval Bases Act.

The defendants, Builders, Pearl Harbor Dock No. 4, and United States Fidelity and Guaranty Company therefore pray for a compensation order relieving and releasing said Builders, Pearl Harbor Dock No. 4 and United States Fidelity and Guaranty Company, of and from any further or other liability for the payment of compensation on the ground that the sum of \$7,500.00, the maximum sum allowable under the Federal Act as above cited, has been paid to the claimant for the disability from which he now allegedly suffers as the result of the original injury of December 2, 1941 and the aggravating injury of January 13, 1942.

II.

The defendants, Builders, Pearl Harbor Dock No. 4, and United States Fidelity and Guaranty Company, petition for an order terminating liability and disability on the further ground that for a long period of time prior to the date hereof, the claimant has had continued and substantial earnings as the owner and/or proprietor of a vegetable stand and that for a long period of time prior to the date hereof his earnings have been in excess of those which he was earning as of the date of injury, December 2, 1941.

The defendants petition for termination of liability and disability for the reasons set forth in paragraph 2 hereof, and is based upon Section 922 of the Longshoremen's and Harbor Workers' Compensation, on the ground of a change in conditions.

Dated at Los Angeles, California, October 29, 1948.

Respectfully submitted,

By VIRGIL L. BROWN,
Attorney for Petitioners.

Federal Security Agency, Bureau of Employees
Compensation, 13th Compensation District

Case No. DB-P-61-65

In the matter of the claim for compensation under
the Acts of Congress of August 16, 1941 and
December 2, 1942, extending the Longshore-
men's and Harbor Workers' Compensation Act.

FRED F. LAIRD,

Claimant,

against

PACIFIC BRIDGE COMPANY,

Employer,

UNITED STATES FIDELITY & GUARANTY
CO.,

Insurance Carrier.

COMPENSATION ORDER—ORDER DENYING
PETITION FOR TERMINATION OF LIA-
BILITY UNDER AWARD, AND FIXING
ATTORNEY'S FEE

Compensation Order having been entered herein
on November 4th, 1942 and supplemented by an
order of April 16th, 1943 fixing medical expenses,
and by an order of September 16th, 1946 denying
petition for termination of liability, and said orders
having divided the weekly payment of \$25.00 a week
due for claimant's continuing partial disability
between defendants herein and defendants in file

DB-P-1-715, Laird vs Contractors, Pacific Naval Air Bases and Liberty Mutual Insurance Company, employer and insurance carrier at the time of a former injury, which initiated disability which was later increased by claimant's injury herein, and defendants in the present proceeding having now applied for termination of their liability upon the ground that payments to date by them and by Liberty Mutual Insurance Company have together exceeded the sum of \$7,500.00, and also upon the ground that claimant is not now suffering any loss of wage earning capacity as a result of his injury of January 13th, 1942, and hearing having been held thereon and the matter being submitted for decision, and the Deputy Commissioner being of opinion that the liability of defendants herein under Section 14(m) of the Longshoremen's and Harbor Workers' Compensation Act extends to a maximum limit of \$7,500.00 for each of claimant's injuries separately and that the payments made by defendants herein, Pacific Bridge Company and United States Fidelity & Guaranty Company have not yet reached the sum of \$7,500.00, and said petition for termination of liability not alleging any change in claimant's physical condition, and the evidence adduced at said hearing having failed to show that claimant's earning capacity has increased since the last preceding order to a sufficient extent to permit reduction of claimant's weekly compensation rate, and it further appearing that claimant's attorney, C. L. Blek, has rendered legal services to claimant

in this case and in case No. DB-P-1-715 since the entry of the last preceding order for which a fee is requested, and that a fee should be approved in the sum of \$100.00 to be divided equally between said two files and that a lien should be granted herein for the sum of \$50.00 upon compensation due from defendant, United States Fidelity & Guaranty Company.

It Is Hereby Ordered that the petition herein for termination of liability be and the same is hereby Denied, and that defendants pay to claimant's attorney, C. L. Blek, upon his lien upon compensation payments due claimant, Fred F. Laird, the sum of \$50.00.

Given under my hand at San Francisco, California, this 1st day of December, 1948.

WARREN H. PILLSBURY,
Deputy Commissioner,
13th Compensation District.

WHP:el/ml

[Endorsed]: Filed August 5, 1949.

Federal Security Agency

Bureau of Employees' Compensation

13th Compensation District

CASES DB-P-61-65 and DB-P-1-715

In the Matter of the Claim for Compensation Under the Longshoremen's and Harbor Workers' Compensation Act as Extended by Act of Congress of August 16, 1941.

FRED F. LAIRD,

Claimant,

against

PACIFIC BRIDGE COMPANY, contractors Pacific Naval Air Bases,

Employers,

U. S. FIDELITY AND GUARANTY COMPANY,
LIBERTY MUTUAL INSURANCE COMPANY,

Insurance Carriers.

CERTIFICATION OF TRANSCRIPTS
OF TESTIMONY

This is to certify that I am the duly appointed, qualified and acting Deputy Commissioner of the Federal Security Agency, Bureau of Employees' Compensation under the Longshoremen's and Harbor Workers' Compensation Act and the Defense Bases Compensation Act (Act of Congress of August 16th, 1941) for the Thirteenth Compensation

District, comprising the State of California and other portions of the United States:

That there has recently been pending before me as said Deputy Commissioner, claims for compensation benefits transferred to me under said Acts from the Pacific Compensation District of Fred F. Laird, against Pacific Bridge Company and Contractors Pacific Naval Air Bases, Employers, and U. S. Fidelity and Guaranty Company and Liberty Mutual Insurance Company, insurance carriers;

That the attached are original transcripts of testimony and exhibits in said file, as listed below:

(1) Transcript of Testimony of August 4, 1942, with attached exhibits: Ex. "A", Report of G. Mosser Taylor, M.D., of July 6, 1942; Ex. "B", Report of Leslie C. Grant, M.D., of July 31, 1942; Ex. "C", Certification of H. O. Maxwell, Personnel Manager, Builders Pearl Harbor Dock, No. 4, dated Feb. 10, 1942.

(2) Transcript of Testimony of August 18, 1942, with attached exhibit: Ex. "A", Report of informal conference held in the office of the Deputy Commissioner, Pacific Compensation District, Saturday, February 14, 1942, at 12:00 noon.

(3) Transcript of Testimony of September 15, 1942.

(4) Transcript of Testimony of October 5, 1942, with attached exhibits: Ex. "A", Report of Dr. Mark A. Glaser of September 8, 1942; Ex. "B", Report of Fred F. Laird of July 7, 1942.

(5) Transcript of Testimony of September 13, 1943.

(6) Transcript of Testimony of October 18, 1943, with attached exhibits: Ex. "A", Report of Dr. Lawrence Chaffin of September 30, 1943; Ex. "B", Report of Carl W. Rand of October 4, 1943; Ex. "C", Letter from Department of Education, Bureau of Vocational Rehabilitation, of September 27, 1943.

(7) Transcript of Testimony of August 19, 1946, with attached exhibit: Ex. "A", Report of Dr. Christopher Mason of August 1, 1946.

(8) Transcript of Testimony of November 22, 1948.

Given under my hand at San Francisco, California, this 29th day of August, 1949.

/s/ WARREN H. PILLSBURY,
Deputy Commissioner,
13th District.

whp:j

United States Employees' Compensation
Commission

Before Warren H. Pillsbury, Deputy Commissioner
13th Compensation District

CASE No.

FRED LAIRD,

Claimant,

vs.

BUILDERS PEARL HARBOR DRY DOCK No.
4, and CONTRACTORS PNAB,

Employers,

U. S. FIDELITY & GUARANTY CO., LIBERTY
MUTUAL INSURANCE CO.,

Insurance Carriers.

TRANSCRIPT OF TESTIMONY AT HEARING

August 4, 1942

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at State Industrial Accident Commission's Hearing Room, State Building, Los Angeles, on August 4, 1942, at 4:00 p.m.

APPEARANCES

MR. CLAUDE F. WEINGAND,

Attorney at Law, appearing for Liberty Mutual Insurance Co., 939 Rowan Bldg., Los Angeles.

Claimant present in person.

MR. F. W. BUNNETT and MR. HOGAN, Attys.,
appearing for U. S. Fidelity and Guaranty
Co., Los Angeles, California.

Deputy Commissioner Pillsbury:

Hearing under the Military Bases Act, Act of Congress of August 16, 1941. The matter comes up today for partial testimony as an emergency. After informal conference at Los Angeles two weeks ago by telephone and otherwise with the parties, I had expressed the opinion that the matter would be regularly on for hearing for today. However, delay occurred in getting claim blanks to claimant and their return to my office. As a result the matter was not officially set for hearing. However, claimant made inquiries this morning as to the status of the case and without having the records before me the parties were notified informally and have consented insofar as emergency may require to taking testimony. Claimant states he has one witness, Mr. Nelson, who has come from San Francisco for giving evidence today and desires his testimony to be taken at this time.

It Is Stipulated it may be done. It Is Stipulated that the claim, which is not in my possession at this time, is twofold:

(1) Injury to the back sustained on December 2, 1941 while in the employ of Pacific Naval Air Bases at Johnston Island.

(2) Injury to the back while in the employ of Pacific Bridge Company at Pearl Harbor.

Claimant has stated that he was operated on several weeks ago for a spinal condition, probably a correction of a nucleus pulposis affair, and that today is his first day out. It is stipulated that the testimony of the witness Nelson may be taken at this time and that if the case has not yet been transferred to me from the Deputy Commissioner at Honolulu any transfer which may be made shall be retroactive and cover the testimony taken today.

H. D. NELSON

a witness called on behalf of Claimant, being first duly sworn by the Deputy Commissioner, testified as follows:

Direct Examination

By the Deputy Commissioner:

Q. What is your full name?

A. Hanford David Nelson.

Q. Your address Mr. Nelson?

A. 1450 - 28th Avenue, San Francisco.

Q. What is your occupation Mr. Nelson?

A. Carpenter.

Q. Do you know Mr. Fred Laird here?

A. I met Mr. Laird on Johnston Island when I arrived there in October.

Q. Did you work with him on Johnston Island?

A. I did on occasions, helping out. I got to know Mr. Laird quite well.

(Testimony of H. D. Nelson.)

Q. Did you also work with him at Pearl Harbor?

A. I worked at Pearl Harbor for Pacific Bridge Company one day.

Q. Did you see Mr. Laird while he was in Honolulu? A. Yes.

Q. Do you know of anything happening to Mr. Laird on Johnston Island?

A. He was moving a small derrick and I helped move it and I know he was given a slip from the Nurse Department to lay off a few days.

Q. Did you see him while he was helping with the derrick? A. Yes.

Q. Did anything happen to him at that time?

A. We were just lifting. As far as stumbling over, I don't recall anything like that.

Q. Tell me what you saw?

A. Mr. Laird straddled the derrick and partially raised it off the ground and dragged it out of the way.

Q. Did anything happen to him as far as you saw?

A. Nothing that I could notice at the moment. He didn't fall over or anything like that.

Q. Did he complain of any pain at that time?

A. He did. He doubled himself up.

Q. Was that at the time he was lifting or sometime afterwards?

A. That was shortly afterwards.

Q. How soon afterwards—a day or two?

A. No, it was the same afternoon. I went across

(Testimony of H. D. Nelson.)

the street to go back to my regular job. They asked me to give them a hand at moving the derrick and when I went back to my regular job that afternoon Mr. Laird——

Q. Tell me what you saw or what happened to Mr. Laird and any complaints he made.

A. We dragged this derrick out of the way and Mr. Laird went back to his job and I went across the street to mine and within an hour or so Mr. Laird was off work.

Q. You said something about his being doubled up.

A. He was favoring one side on his way to the office.

Q. Did you see him at that time? A. Yes.

Q. You say that was within an hour after you dragged the derrick. Did he say anything at that time about it?

A. I couldn't say because there was quite a little noise.

Q. Did you hear him say anything about having any pain?

A. Later on in the afternoon he complained about his side.

Q. And what did he say that you heard?

A. He just stated he had hurt his back and had a shooting pain across the back. (Indicating from the spine around the right side and down the front of the right leg a few inches)

Q. Just what did he say about it?

(Testimony of H. D. Nelson.)

A. Well somebody had evidently asked him what was wrong. He looked fairly pale and someone asked what was wrong and he said he had a severe pain in his side and he showed just where the pain was.

Q. You heard him say that? A. Yes, sir.

Q. In the course of that conversation did he say when the pain started or where he got the pain?

A. No, I don't recall his saying that. Of course he didn't come out and make a statement as far as I know.

Q. I just want to know what you heard him say.

A. I can't recall his exact words.

Q. Did he say anything to you or that you heard that day as to where he got the pain or how he got it?

A. He just figured he got it while working on the derrick.

Q. Did he say that?

A. I don't remember his exact words.

Q. I would like to get what he told you.

A. I don't remember his exact words. His indications were that he had hurt himself while dragging the small derrick there.

Q. Did you understand him to say in general words that he had hurt his side while working on the derrick?

A. The only thing he stated that the pain had come since he had lifted the derrick. He didn't come out and say "I hurt myself while lifting that

(Testimony of H. D. Nelson.)

derrick", but he did say the pain developed since he lifted the derrick.

Q. Did you have any conversation with him since while you were working at Johnston Island?

A. Every once in a while I would ask him how he was. Then he was off work and you could tell from his walking around—

Q. Did he tell you at any later conversation on Johnston Island how the pain started or how he got the pain?

A. No, I don't think he did other than I asked him how his back was.

Q. In any other conversation did he say he got the pain while lifting the derrick?

A. He just figured he was hurt at that particular time.

Q. What do you know about any later injury to his back at Pearl Harbor.

A. The only think I know about that is that they were lifting quite a few forms and there was quite a lot of oil on the floor and his foot slipped in the oil.

Q. Is that something you saw or did he tell you?

A. I knew his foot slipped.

Q. How do you know that?

A. The fellow next to him, his foot slipped and he told me. The end of the form fell.

Q. Did you talk to Mr. Laird then or afterwards? A. I talked to him that evening.

Q. What did he tell you at that time?

(Testimony of H. D. Nelson.)

A. He told me at that time he had injured his back and was stiff. I was rooming with him at the time.

Q. Did he state he had hurt himself that day?

A. Yes, he stated he had hurt himself at Pearl Harbor on that day.

The Deputy Commissioner: Mr. Laird do you wish to ask any questions?

Q. (By Mr. Laird): Do you remember the time they put me on the sick list at Pearl Harbor?

A. Yes, it was on the 20th of January. That is when you came on my payroll on sick leave.

Q. For the Pacific Naval Air Base?

A. Yes.

Mr. Laird: That is all.

The Deputy Commissioner: Mr. Bunnett any questions?

Mr. Bunnett: No, I haven't any questions.

The Deputy Commissioner: Mr. Weingand?

Mr. Weingand: Yes.

Cross-Examination

By Mr. Weingand:

Q. Mr. Nelson did you know Mr. Laird before you went to Johnston Island? A. No, sir.

Q. You came to Johnston Island when?

A. October 3d.

Q. This accident Mr. Laird said he had on Johnston Island occurred on December 2d. Do you recall that? A. Yes.

(Testimony of H. D. Nelson.)

Q. Do you know how long Mr. Laird was there?

A. He left on December 5th.

Q. Were you rooming with him on Johnston Island?

A. Not at that time.

Q. How long was this derrick you were moving?

A. Well it was I guess about 10 x 15 feet, possibly weighing 1500 pounds.

Q. How many men were assigned to the task of moving it?

A. Well I think there was five, or six—they just picked up anyone that happened to come along.

Q. As a matter of fact there were ten men weren't there lifting this derrick?

A. I couldn't swear to it.

Q. How wide was this derrick—a foot?

A. About five feet in my opinion.

Q. Didn't you just tell Mr. Pillsbury that you were straddling the derrick and lifting it?

A. The derrick is not square.

Q. You describe its dimensions.

A. In my opinion the derrick comes to a point like this (indicating) with rods on it.

Q. You mean it starts with a small base gradually becoming larger?

A. Yes.

Q. And its largest dimension is how large?

A. About four or five feet.

Q. How did you fellows stand?

A. We just straddled it. I cradled with my two hands and as I lifted I pulled.

Q. Where was Mr. Laird as to you?

(Testimony of H. D. Nelson.)

A. He was on the right.

Q. Were there any men between you and Mr. Laird?

A. I think there was two on my side and one on the other side.

Q. How long did it take you to move this derrick from where it was until where you put it down?

A. Just a few minutes. I couldn't swear exactly how long.

Q. What time of day did this happen Mr. Nelson?

A. About eleven o'clock, just before noon.

Q. Up to the time you lifted this derrick did you hear Mr. Laird make any outcry?

A. You mean until we left the derrick?

Q. Yes. A. No, I didn't.

Q. Where did you go after you left the derrick?

A. I went across the street to my regular job.

Q. As a carpenter? A. Yes, sir.

Q. Did you see where Mr. Laird went?

A. I saw him go to his job.

Q. And his job at that time was filing saws?

A. Yes.

Q. Did you see him again that day?

A. I saw him as I went to lunch.

Q. What was he doing?

A. He was just standing there explaining as far as I know how he was injured.

Q. You know, do you not, Mr. Nelson, Mr. Laird worked the rest of that day?

(Testimony of H. D. Nelson.)

A. As far as I understand it he saw the doctor or the nurse that noon.

Q. As a matter of fact didn't he tell you after he was through he was going to see the doctor or the nurse about his back?

A. I don't remember as to that afterwards.

Q. Did you see him any time in the afternoon on December 2d?

A. Not to speak to. I just saw him walking up the road.

Q. Going toward his place of work?

A. I just got a glimpse of him. I might say he was going toward his work.

Q. Did you come back on the same boat with Mr. Laird to the States? A. Yes.

Q. And you discussed with him his injuries while you were on the boat to the mainland?

A. I didn't discuss his injuries, no.

Q. How did you happen to come up here today Mr. Nelson?

A. I have been keeping in contact with Mr. Laird and I got in touch with a friend of his who stated he was hurt. I had an injury myself and had got out of contact with him, and the other day I received a letter stating he was undergoing an operation and I wrote back and his sister told me he had suffered quite a bit, and I wrote back.

The Deputy Commissioner: Did he ask you to come to testify for him?

The Witness: Yes.

(Testimony of H. D. Nelson.)

Q. (By Mr. Weingand): As far as you know Mr. Nelson Mr. Laird went on with the lifting of this derrick until you got it where you wanted it, that is he was there until you all quit?

A. Yes, sir.

Q. Did he ever tell you he had some trouble with his eyes? A. Yes, sir.

Q. Didn't he tell you that was why he quit on the 5th of December so he could go to the hospital for his eyes? A. Yes.

Q. When next did you see him?

A. I ran into him after I got back.

Q. I mean, Mr. Nelson, in Honolulu?

A. I met him about the 5th of January.

Q. Was that while you were working or was on the street?

A. No, we came in to the same hotel.

Q. That is the Contractors' Hotel on the Island?

A. Yes.

Q. When did you leave the Island?

A. I left on December 27th and arrived in Honolulu on the third of January.

Q. You worked but one day with Mr. Laird for the Pacific Bridge Company?

A. Yes, sir.

Q. What was that day?

A. That was on January 13th. I signed with the Pacific Bridge Company on the 10th and went to work on Monday. I don't remember exactly.

Q. Let me help you there Mr. Nelson. We have

(Testimony of H. D. Nelson.)

agreed that the second injury occurred, if it occurred at all, on January 13th. Is that the day you were there?

A. I either signed on the 10th or 11th, whichever fell on Saturday and I went to work the next Monday morning.

Q. And that is the day you were lifting?

A. We were lifting forms.

Q. Very briefly describe the size, and shape and approximate weight of the forms?

A. The forms were concrete. They were made out of 2 x 4s and 1 x 6 sheeting. In my opinion they were between 4 and 6 feet in height and ran from 16 to 20 feet long.

Q. How many men were used to lift those forms?

A. That I couldn't tell you.

Q. More than two? A. Oh yes.

Q. As many as 20?

A. I would say between 15 and 20—approximately 15 men.

The Deputy Commissioner: Were they all lifting on the same form at the same time? How many men would pull?

The Witness: I couldn't tell you exactly.

The Deputy Commissioner: How many were lifting with you on the form you were lifting on about?

A. I would say approximately 15 men.

Q. (By Mr. Weingand): One of them was Mr. Laird? A. Yes.

(Testimony of H. D. Nelson.)

Q. What was the weight?

A. I couldn't tell you. I have no idea in the world.

Q. As heavy as the derrick you and Mr. Laird were lifting? A. No, not as heavy.

Q. Give us some rough estimate. I know you didn't weigh it.—100 pounds—1000 pounds?

A. I couldn't say.

Q. Use the same thought process that you used at arriving at the steel bearing on Johnston Island.

A. I would say the forms weighed approximately 1500 pounds.

The Deputy Commissioner:

Q. And fifteen men lifting it?

A. Yes, sir.

Q. Why should that be?

A. If you get two men on the end of each form the form will bow. In my opinion the reason we didn't have so many men on the derrick was that we didn't lift it off the ground. We slid it.

Q. You didn't see Mr. Laird slip on the form?

A. No, I heard somebody holler and somebody said he slipped.

Q. Did you see him that day? A. No.

Q. You were rooming with him?

A. I roomed with him two days after that.

Q. For the one day's work you did whose name was on the check?

A. There was no check for that one day. I was paid off by the Pacific Naval Air Bases for all that

(Testimony of H. D. Nelson.)

time. While I was in Honolulu I didn't receive any money from the third of January until the 25th or 26th.

The Deputy Commissioner: I don't see Mr. Weingand that that involves the loaned servant situation. In the Given case that I had it was indicated that the men were taken to Hawaii but at some time the men were loaned to Pacific Bridge. That seems to be the gist of this letter of Mr. Schmitz'.

Mr. Weingand: No further questions Mr. Nelson. Thank you.

The Deputy Commissioner: Mr. Hogan any questions?

Mr. Hogan: I would like to ask one question if I may.

By Mr. Hogan:

Q. This called derrick you were talking about, would that be in the nature of a drag line boom or something of that sort?

A. The derrick is built with the same kind of construction as the drag line but a derrick is a solid structure.

Mr. Weingand: Draw us a picture.

(Witness draws picture.)

Q. (By Mr. Weingand:) You have big cables here holding your boom up. A. Yes.

Q. You call this a boom? A. Yes.

Q. What is a derrick?

A. A derrick is stationary. A derrick has skids

(Testimony of H. D. Nelson.)

under it the same as pile drivers. They are all different sizes.

Q. (By the Deputy Commissioner): Was this derrick assembled or lying on the ground?

A. It was lying on the ground. We wanted to back a truck up and move it to get it out of the way.

Q. Is a derrick something in the nature of a drag line boom? A. Yes.

The Deputy Commissioner: I have been handed some medical reports by Claimant:

Report of Dr. G. Mosser Taylor dated July 6, 1942. Received in evidence as Exhibit "A".

Report of Dr. Leslie C. Grant, dated July 21, 1942. Received in evidence as Exhibit "B".

A statement from Builders Pearl Harbor Dry Dock No. 4, dated February 10, 1942. Received in evidence as Exhibit "C".

Mr. Weingand: I object to the introduction of that letter for the reason it is self-serving and hearsay and makes obvious conclusions.

The Deputy Commissioner: Objection overruled without prejudice. That is, Mr. Weingand, I appreciate the force of your comment but it may be admissible for some other limited purposes.

Claimant has also handed me a copy of claim for compensation he filed with Deputy Commissioner Schmitz on February 5th, 1942.

Copy of statement over the signature of Deputy Commissioner Schmitz of which I have copies in

(Testimony of H. D. Nelson.)

my office. It will be understood these copies will be in the file.

Hearing continued to two weeks from today.

Reporter's Certificate

I Hereby Certify that the foregoing is a true and correct transcript of the testimony *of the testimony* and proceedings at the hearing held at State Industrial Accident Commission Hearing Room, State Building, Los Angeles, California, on August 4, 1942.

/s/ SARA T. LONGLEY,
Reporter.

EXHIBIT A

G. Mosser Taylor, M.D.

Alonzo J. Neufeld, M.D.

Orthopedic Surgery

1216 Wilshire Blvd., Los Angeles

Name Laird, Mr. Fred F.

Address 608 E. 67th St., Inglewood.

Phone OR 1-8023

Referred by Leslie C. Grant, M.D.

Relative Lavern Laird—wife same add.

Date July 6, 1942

Age 31 Cauc Male Married Aircraft

Worker

Present Employer: Northrup Aircraft, Hawthorne, California

Exhibit A—Continued)

Insurance Carrier: Prudential.

Employer at time of Injury: Hawaiian Dredging Company

Insurance Carrier: Liberty Mutual Insurance Company

Chief Complaint

Painful right low back and leg.

History of Chief Complaint

Onset—Sudden, about six months ago, when lifting a heavy piece of iron experienced a burning pain in the low back running down into the right gluteal region.

Course—Heat was given. Improved some with rest but never has been completely well. Was returned to the mainland, having been working in the Territory of Hawaii. Before returning to the mainland was attempting to do some work at Pearl Harbor, while lifting a form pain again appeared, this time running down toward the knee, also affecting the right groin. From March 29, 1942 to June 4, worked for Northrup Aircraft Company. No particular occasion occurred that would aggravate it except the gradual increase of his symptoms.

Present Status

Pain is more or less constant, throbbing in character.

Worse at night. Keeps him awake hours at a time. Stiffness on getting out of bed in the morning. Keeps changing position while seated, or

Exhibit A—Continued)

standing. Walking over a block or two is practically impossible.

Pain is being referred down the leg with numbness and tingling affecting it.

Coughing aggravates markedly, also refers the pain.

No differences so far as barometric changes are concerned.

Past History

Irrelevant. No previous serious accident affecting the back or right leg.

Examination

Examination reveals a well developed, well nourished young adult white male. Temperature 99.6°, pulse 100, height 5'8", weight 140 pounds. Rather apprehensive.

Gait—Walks with a marked limp on the right, with the body flexed somewhat to the left and forward.

Standing—Stands with weight on the left.

Posture—Typical sciatic scoliosis. Marked lumbar muscle spasm. Levels are normal.

Movements—Forward bending 30° with list slightly toward the left. Backward bending uncomfortable. Right and lateral bending done slowly. All other movements free.

Deep Percussion over the lower back painful.

Lying Supine

Mensuration—Leg lengths: Right 86.5 cm., Left 86.5 cm.; Thighs: Right 35 cm., Left 36 cm.; Calves: Right 35.5 cm., Left 34 cm.

Exhibit A—Continued)

Movements—Straight leg raising: Right 35°, left 80°, both to 60° from the horizontal. Flexion of the knees on abdomen painful at limits.

Lying on Sides—Torsion with right side up painful.

Lying Prone—Hyperextension with both painful.

Tenderness—Lower lumbar interspinous ligaments, but mainly sacrolumbar.

A small mass is present in the midline at about the level of the 5th lumbar spine, or between the 5th lumbar and the 4th. Quite tender to palpation.

Right costolumbar and iliolumbar angles tender.

Gluteal region quite tender on the right.

Pressure of the right lumbar lateral margin produces pain down the right leg.

General Findings

Tonsils enlarged, cryptic, full of caseous and purulent material. Pillars are reddened.

Reflexes—Reflexes: Achilles on the right lost.

Sensory Modalities—Hypesthesia of the lower outer surface of the right leg from the middle of the leg to a point just below the malleolus.

X-ray Examination

Made by Leslie C. Grant, M.D., July 3, 1942, showing antero-posterior and lateral views of the lumbar spine and pelvis, reveals good bone detail, fairly normal joint outline. The space between the 3rd and 4th appears a little less than that

Exhibit A—Continued)

below it or even that above it. The sacrolumbar disc is also thinned, particularly posteriorly where there is a certain amount of exaggeration of the posterior angle of the 5th lumbar vertebra.

Diagnosis

Ruptured nucleus pulposus involving the 5th lumbar. Focus of infection: Chronic follicular tonsillitis.

Discussion

Lesions of the intervertebral disc are generally due to an accident, such as lifting. The immediate relationship between the act of lifting is of course six months previous to which he had had no trouble in his back, and the establishment of the symptoms which have persisted until the present identify the accident with his complaint to a reasonable degree of certainty.

Under local anesthetic a rupture of the nucleus was found between the 4th and 5th lumbar which was quite prominent and was producing considerable tension on the nerve root as it passed over. After retracting this nerve root and the dura the nucleus was removed and all the debris within the disc itself was removed by special forceps and curetted. Because of increased mobility between these vertebrae, a fusion was done, placing a block of bone taken from the posterior spine of the ilium and placed between the spine of the 4th and 5th lumbar vertebrae. The doctors in attendance

Exhibit A—Continued)

were Alonzo J. Neufeld, my associate, and Leslie C. Grant, the referring physician.

/s/ G. MOSSER TAYLOR, M.D.

ALONZO J. NEUFELD, M.D.

 EXHIBIT B

Leslie C. Grant, M.D.

3130 W. Manchester Blvd.

Inglewood, Calif.

July 31, 1942

To Whom it May Concern:

Mr. Fred Laird of 608 E. 67th Street, Inglewood, Calif., first consulted me about a pain in the back on June 4, 1942. At this first consultation he complained of pain which radiated down his right leg, a pain which was much aggravated by coughing or straining. He had some burning on urination and a temperature of 102°. On examination: Straight leg raising right leg 30°, left leg 80°. Reflexes; Achilles and knee jerk—markedly reduced on right, normal on left. Slight hyperesthesia along lateral aspect of right leg. Rectal exam shows a tender boggy prostate with marked tenderness on right lobes. Prostatic secretion shows pus cells. Stained smears show no gram negative intracellular diplococci. On the basis of these finding a diagnosis of acute prostatitis together with a possible ruptured nucleus pulposus was made. Biweekly prostatic massage together with diathermy through the pelvic region was

Exhibit B—Continued)

began and the prostatic condition after an initial flareup requiring two days of hospitalization began to improve. The prostatic secretion became normal but the back pain continued unabated, so he was referred down to Dr. G. Mosser Taylor for consultation and confirmation of the tentative diagnosis of ruptured nucleus and pulposus. On his advice surgery was performed on July, 9, 1942 at which time the bulging disc with the stretched nerve root coursing across it were clearly demonstrated.

The postoperative course has been very satisfactory with a complete absence of the former pain down the right leg. He was given a lumbo-sacral brace on July, 28, 1942 and is now up and about.

An itemized statement of Mr. Lairds account with us is given on the attached sheet.

The prognosis for ultimate cure is good, probable permanent disability because of the necessary fusion of the 5th Lumbar vertebrae may approximate 25%.

/s/ LESLIE C. GRANT M.D.

Exhibit B—Continued)

Form US-203

United States Employees' Compensation
CommissionOffice of Deputy Commissioner Pacific District
Administering Longshoremen's and Harbor
Workers' Compensation Act

Employee's Claim for Compensation
(To be filed with the Deputy Commissioner
in accordance with sections 13 and 19 of the
law)

Injured Person

1. Name of employee Fred F. Laird. Employee's
check No. 943 (Pac. Bridge).

2. Address: Street and No. Contractors Hotel.
City or town Honolulu-27463 (PNAB).

3. Sex Male. Age 31. Married, single, widowed
Married.

4. Do you speak English? Yes. Nationality
American.

5. State regular occupation Carpenter-foreman.

6. What were you doing when injured? Carpen-
tering.

7. (a) Wages or average earnings per hr., \$1.50.
(Include overtime, board, rent, and other allow-
ances.) (b) Per week, \$..... (c) Were you
employed elsewhere during week in which you were
injured? (d) If so, state where and when
.....

Exhibit B—Continued)

8. Were you paid full wages for day of accident?

Yes.

Employer

9. Employer Pacific Bridge or Contractors, PNAB.

10. Office address: Street and No.
City or town Honolulu.

11. Nature of business Construction.

The Injury

12. Place where injury occurred Dry Dock #4.

13. Name of foreman Fred Toft, Sup't.

14. Date of accident or first illness, the 13th day of January, 1942, at 9 o'clock a.m.

15. How did accident happen or how was occupational disease caused? Lifting cement form.

Nature and Extent of Injury

16. State fully nature of injury or occupational disease: Pain in right side and torn ligaments. Possible hernia.

17. On what date did you stop work because of injury? January 28, 1942.

18. Have you returned to work? (Yes or No.) No. If "yes," on what date?....., 19....

19. Does injury keep you from work? (Yes or No.) Yes.

Exhibit B—Continued)

20. Have you done any work in period of disability? Yes.

21. Have you received any wages since injury? Yes. If so, from and to what date? Up to January 28.

22. Has injury resulted in amputation? No. If so, describe same

23. Did you request your employer to provide medical attendance? Yes. Has he done so? Yes.

24. Attending physician: Name Alsup Clinic. Address Honolulu.

25. Hospital: Name..... Address

Notice

26. Have you given your employer notice of injury? (Yes or No.) Yes. When? January 13, 1942.

27. If such notice was given, to whom? Time-keeper.

28. Was it given orally or in writing? Orally.

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

/s/ FRED F. LAIRD,
Claimant.

Exhibit B—Continued)

Mail address Contractors Hotel, Honolulu, Main-
land Address, P.O. 875, Inglewood, Calif. c/o
Walter Frey.

Dated February 5, 1942.

EXHIBIT C

Builders Pearl Harbor Dry Dock No. 4

Contract Noy 5049

Pacific Bridge Company

P.O. Box 3650

Cable Address: Dockfour Honolulu, T.H.

February 10, 1942

To Whom It May Concern:

This is to certify that Fred Laird has been working for this Company since December 14, in the capacity as carpenter foreman.

We have found Mr. Laird's work and ability to handle men satisfactory in every respect, and, therefore, do not hesitate to recommend him to anyone in need of a man of this classification.

The reason Mr. Laird left our employ was because of an injury which he sustained previous to our employing him.

BUILDERS PEARL HARBOR
DRY DOCK NO. 4

/s/ H. MAXWELL,
Personnel Manager.

REPORT OF DEPUTY COMMISSIONER
ON COMPENSATION

Stipulations

Report of informal conference held in the office of the Deputy Commissioner, Pacific Compensation District, Saturday, February 14, 1942, at 12:00 noon.

Present

Mrs. Gluckman, insurance clerk, Contractors, PNAB; C. F. White, resident manager, Liberty Mutual Insurance Company, representing the employer, Contractors, PNAB; George X McLanahan, representing Builders, Pearl Harbor Dry Dock #4 and its predecessor, Pacific Bridge Company; and A. H. Matthew, representing U.S. Fidelity and Guaranty Company, insurance carrier for Builders, Pearl Harbor Dry Dock #4.

Presiding

A. F. Schmitz, Deputy Commissioner, Pacific Compensation District.

Mr. McLanahan was requested to enlighten the deputy commissioner as to why reports had not been filed. Mr. McLanahan explained that Fred Laird originally was employed by Contractors, PNAB; that on January 13, 1942, the date of the injury, he was, however, actually at work for the Pacific Bridge Company, under its jurisdiction and supervision, and was on its payroll; that the wages earned were, however, paid to him through the Contractors, PNAB; that the failure in filing is probably due to a mistake caused by the loaned labor arrangement.

Mr. McLanahan insists that he promptly reported the injury to Contractors, PNAB, because in his opinion they would take care of the compensation liability. Apparently they did not do so and did not again contact him in this regard.

Mr. A. H. Matthew, representing the employer, Builders, Pearl Harbor Dry Dock #4, and insurance carrier, U.S. Fidelity and Guaranty Company, stated that he has gone into this matter thoroughly and is satisfied that the relationship of employer and employee existed between Fred Laird and Builders, Pearl Harbor Dry Dock #4, or its predecessor, on January 13, 1942, and that the employer and employee were within the scope of the Defense Bases Act at that time, and hereby stipulates to such fact.

Mr. Matthew submitted a report of Dr. F. J. Alsup, dated February 2, 1942, which indicates that there is doubt as to whether or not the claimant's present condition is the result of injury by accident occurring on January 13 as alleged.

It is learned that Fred Laird has left Honolulu and is on his way to the mainland and that further action in this case will necessarily be held in abeyance until Mr. Laird requests disposition of his claim.

The matter of Leonard David Nelson was then discussed. Mr. Matthew stated that he will stipulate in the matter of Mr. Nelson also that Mr. Nelson was in the employ of Builders, Pearl Harbor Dry Dock #4 on January 10, and that the employer

and employee are within the scope of the Defense Bases Act.

Mr. Matthew presented statements by W. J. Futrell, co-worker of Mr. Nelson, dated February 13, 1942, Delbert Phillips, foreman, dated February 13 and George X. McLanahan, dated February 13, indicating that Nelson failed to report his accident as required by the law.

It was impossible to get in touch with Mr. Nelson at this time and it is thought that he, too, has already returned to the mainland. In view of this, no further action will be taken in this claim unless and until requested by Mr. Nelson.

Yours truly,

/s/ ANDREW F. SCHMITZ,
Deputy Commissioner,
Pacific District.

AFS:jm

Stipulated to by U.S. Fidelity and Guaranty Company.

By /s/ A. H. MATTHEW.

Copy forwarded to Washington.

Filed Aug. 21, 1942.

United States Employees' Compensation
Commission

Before Warren H. Pillsbury, Deputy Commissioner
13th Compensation District

Case No. 8 Claim No. 13

FRED F. LAIRD,

Claimant,

vs.

PACIFIC BRIDGE COMPANY, HAWAIIAN
DREDGING CO.,

Employers,

U.S. FIDELITY & GUARANTY CO., LIBERTY
MUTUAL INSURANCE CO.,

Insurance Carriers.

TRANSCRIPT OF TESTIMONY AT HEARING

August 18, 1942

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at Hearing Room of Industrial Accident Commission, State Building, Los Angeles, California, on the 18th of August, 1942, at 9:15 a.m.

Appearances

Claimant present in person and represented by MR. P. S. BLEK, Attorney at Law, Inglewood, California.

Defendants Pacific Bridge Co. & U.S. Fidelity & Guaranty Co. representend by MR. F. W. BONNETT, Attorney at Law, Los Angeles, Cal.

Defendants Hawaiian Dredging Co. and Liberty Mutual Ins. Co. represented by MR. CLAUDE F. WEINGAND, Attorney at Law.

Deputy Commissioner Pillsbury:

An emergency hearing was held on stipulation on August 4, 1942, to take the testimony of a witness at which time I did not have my file as it had not been set for hearing on that day. The matter now comes on for hearing regularly upon the claims on file. It is understood that the two injuries covered in the two claims referred to above will interlock and for that reason I am proceeding on a consolidated transcript on the two claims.

The two claims are for a back injury on December 2d, 1941 while in the employ of Hawaiian Dredging Co., and a back injury on January 13, 1942 while in the employ of Pacific Bridge Company and this hearing is for the purpose of disentangling, if possible the disabilities with reference to the two injuries.

These cases arise under the Military Bases Act, an Act of Congress of August 16, 1941 extending the provisions of the Longshoremen's and Harbor Workers' Act to employment on Air, Military and Naval Bases of the United States. The two injuries, above mentioned, are conceded to have occurred at Johnston Island and Pearl Harbor respectively.

The cases have been transferred to me by the Deputy Commissioner at Honolulu with approval of the U.S. Employees' Compensation Commission for hearing and decision. Since claimant's arrival in California an operation has been performed on his spine but not by the Insurance Carrier's physicians.

The Deputy Commissioner (To Mr. Blek): Mr. Blek what are Claimant's contentions?

Mr. Blek: That he was injured in the course of his employment and it is a proper case for compensation. I notice the Carriers deny he was injured in the course of his employment or that he was injured at all:

The Deputy Commissioner: Have you anything definite as to which of the two injuries should be charged to either Carrier?

Mr. Blek: I think it was the first one and the second aggravated the condition.

The Deputy Commissioner: Then the claim of injury is against both of them?

Mr. Blek: Both of them, yes.

The Deputy Commissioner: Mr. Bonnett, what is your contention?

Mr. Bonnett: It is our contention he was not in the employ of Pacific Bridge Company at any time and the cause was from the first accident. That there is no relation between the Claimant and the Pacific Bridge Company.

The Deputy Commissioner: Mr. Weingand what are your contentions?

Mr. Weingand: Our contention is that if the em-

ploye did sustain an injury while in the employ of the P N A B it was not an injury that caused any disability. Second, that in the second injury the Claimant was in the employ of Builders, Pearl Harbor Dry Dock No. 4, and in that connection I refer to stipulations which were transcribed of the informal conference on February 14th. The stipulations were evidently taken at Honolulu, in which Deputy Commissioner Schmitz states he has gone into this matter further and he is satisfied that the relation of employe and employer existed between Fred Laird and Builders, Pearl Harbor Dry Dock No. 4, or its predecessor—Pacific Bridge Company.

Stipulation

The following facts are agreed to by Claimant and Pacific Bridge Company and U.S. Fidelity & Guaranty Company:

(1) That on and about January 13, 1942 defendant Pacific Bridge Company was insured against liability under the U.S. Longshoremen's and Harbor Workers' Act as extended by said Act of Congress of August 16, 1941 by U.S. Fidelity and Guaranty Company.

(2) That the claim is within the provisions of said Acts and the jurisdiction of the Deputy Commissioner.

(3) No claim is made of intoxication or wilfully self-inflicted injury.

(4) No medical treatment has been furnished by these defendants. That if I find the defendants to be liable to claimant for compensation for the alleged injury my compensation order may carry with it a direction to reimburse claimant for his reasonable medical expenses proportionately or otherwise as the compensation may be proportioned.

(5) Notice of claim of injury within proper time is admitted.

(6) No compensation has been paid.

Issues

The issues are:

(1) Whether claimant was in the employ of Pacific Bridge Company at the time of his alleged injury of January 13, 1942.

(2) Whether claimant was injured while in said employ.

(3) Whether such injury occurred in the course of and arose out of his employment.

(4) Average earnings in employment.

(5) Nature and extent of disability due to said injury.

As between claimant and defendants Hawaiian Dredging Company, Contractors Pacific Naval Air Bases, and Liberty Mutual Insurance Company, the following facts are agreed to:

(1) Claimant Fred F. Laird was in the employ of defendant Hawaiian Dredging Company, a member of the Association known as Contractors Pacific Naval Air Bases, on and about December 2, 1941, and at said time said employers were insured against liability under the Longshoremen's and Harbor Workers' Act as extended by said Military Bases Act, by defendant Mutual Insurance Company. That as between these two defendants, Pacific Bridge Company and Contractors Pacific Naval Air Bases may be substituted for the Hawaiian Dredging Company for the purpose of this proceeding.

(2) That the claim is within the provisions of said Acts and the jurisdiction of the Deputy Commissioners.

(3) No claim is made of intoxication or wilfully self-inflicted injury.

(4) No medical treatment has been furnished by these defendants.

(5) Claimant's average earnings may be fixed for the purpose of this proceeding at \$300.00 a month.

(6) No compensation has been paid.

Issues

The issues are:

(1) Whether claimant was injured in the employ of these defendants as alleged.

(2) Whether such injury occurred in the course of and arose out of his employment.

(3) Whether claim for compensation is barred by

(4) Whether any claim for disability since December 2, 1942 is chargeable to this injury.

(5) It Is Further Stipulated that if I find claimant entitled to compensation for this injury award may be made in his favor for his reasonable medical expenses, apportioned or not as the outcome of the case may be determined.

FRED F. LAIRD

the Claimant herein, being first duly sworn by the Deputy Commissioner, testified as follows:

Direct Examination

By the Deputy Commissioner:

Q. Your name is Fred F. Laird?

A. Yes, sir.

Q. What is your address now Mr. Laird?

A. 608 East 67th Street, Inglewood, California.

Q. You are the claimant in these cases?

A. Yes, sir.

Q. And according to your claim you were working on Johnston Island for Pacific Naval Air Bases or Hawaiian Dredging Company, one of its members, on December 2, 1941? A. Yes, sir.

Q. What kind of work were you doing?

A. I was originally engaged as a saw filer. Signed

(Testimony of Fred F. Laird.)

up as a carpenter and he turned me over and put me to filing saws.

Q. On December 2, 1941 which work were you doing? A. I was filing saws.

Q. Did you meet with any accident on that day?

A. That day I moved this stiff legged derrick so the truck could come in. We picked it up about six inches. The front end went down first and I was on the back end and this sharp pain hit me on the back (pointing to fifth lumbar).

Q. Did you receive medical treatment?

A. Yes, sir.

Q. Who did you go to?

A. The male nurse.

Q. What did he do for you?

A. He looked at it and said, "I don't know what is wrong and if it doesn't get better I will have a Marine Doctor from Sand Island." The next day the Marine Doctor told me I have a sacroiliac slip.

Q. Did you do any work the next day?

A. My foreman told me he didn't require me to do anything and I just hung around.

Q. Did you do any more work after December 2d? A. No, sir.

Q. When did you leave for Honolulu?

A. December 5th. I left there December 10th. Mr. Nichols said, "I am going to loan you to Pacific Bridge." I said, "When? I am still sore." He said, "Go on out. I haven't time to fool with you."

Q. When was that?

(Testimony of Fred F. Laird.)

A. That was December 13th.

Q. Were there still emergency conditions there as a result of the bombing?

A. Yes, that was the reason they were sending me.

Q. Was there any reasons on your papers for sending you to Honolulu?

A. I don't know what the papers read. All I know he told me before I left that I needed glasses and he had left word with Jeff if my eyes continued to get bad to send me in for glasses also and he said I could go on for glasses while my back was sore without losing too much time.

Q. Did you report to any doctor in Honolulu for your back before January 13th?

A. Yes, Dr. Alsup.

Q. Who sent you?

A. The Pacific Bridge Company.

Q. Did you report to any doctor in Honolulu for your back before January 13th? A. No.

Q. Then as I understand it on your arrival at Honolulu you were told to go out and work for the Pacific Bridge Company? A. Yes.

Q. Where did you report?

A. I reported to a man by the name of Carlson at Dry Dock No. 4.

Q. What did he do?

A. He immediately put me to work as a pusher.

Q. Did you make any contract of employment?

A. No, I didn't.

(Testimony of Fred F. Laird.)

Q. Who did you get your money from?

A. The Pacific Bridge, through the Contractors.

Q. Was it a check on the Pacific Bridge?

A. Yes.

Q. What was this about your getting it through the Contractors PNAB?

A. I said, "How come I am getting it from the Pacific Bridge" and the Pacific Bridge man told me I was only loaned to them.

Q. Your testimony is that after you went to work at the Dry Dock you got your pay checks by pay checks of the Pacific Bridge Company. Is that right? A. Yes, sir.

(By Mr. Blek): From his statement of earnings and payroll deductions, one being for the weekly period ending January 7, 1942, No. 58 Builders Pearl Harbor Dry Dock No. 4, Contract No. N.O.Y. 5049, employe Co. No. 943, paid to the order of Fred F. Laird \$125.75. Certain deductions are then mentioned. The slip concludes with the words, "Not negotiable. This statement is to be retained by employe detached from check before cashing." Printed signature, "Builders, Pearl Harbor, Dry Dock No. 4." On the prepay part appears this statement: "Pacific Bridge Company, a Delaware corporation, Builders Pearl Harbor, Dry Dock No. 4."

The Deputy Commissioner (To Mr. Bonnett): Mr. Bonnett, can you stipulate Pacific Bridge Company and Builders, Pearl Harbor, Dry Dock No.

(Testimony of Fred F. Laird.)

4 are the same entity, that is, that Pacific Bridge Company was doing work at the Dry Dock under Pearl Harbor, Dry Dock No. 4?

Mr. Bonnett: Yes, all stipulated.

By the Deputy Commissioner (To Mr. Laird):

Q. At the time you went to work for the Pacific Bridge Company was anything said about any change in your classification?

A. Maxwell asked me to change. He was the Personnel Manager. I told him no.

Q. Maxwell was the Personnel Manager for PNAB? A. No, Pacific Bridge.

Q. Was there any change in your wages?

A. They raised me from \$1.20 to \$1.30 and from \$1.30 to \$1.50 an hour.

Q. What did you do? A. As a foreman.

Q. What did you average a week on that job?

A. I averaged \$100.00 a week, due to the fact I was not able to work on account of my back all the time.

Q. Did you have any conversation with the Pacific Bridge Company about your back prior to January 13th?

A. Yes, with the Personnel Manager, Maxwell. I told him I had injured my back and wasn't able to do heavy lifting and I think that is why they made me a foreman.

Q. Did anything happen to you on January 13th?

A. Yes, sir.

Q. What happened?

(Testimony of Fred F. Laird.)

A. We had men working on forms. They were approximately 18 feet long, 7 x 11 wide and 2 x 6s. We turned them over to cross them and I started to help the boys turn them over.

Q. What happened to your back?

A. I lifted the form up and my foot slipped on the grease and the pain hit me in the back of the leg.

Q. Did your leg get any worse at that time?

A. Yes, considerably worse.

Q. How heavy lifting were you doing at the time of this second injury?

A. I couldn't say how heavy but I lifted too much.

Q. What did you say you were lifting?

A. This form.

Q. About what would you say the form weighed?

A. 1,000 pounds or more.

Q. How many do you think were lifting on the form the same time as you were?

A. I should judge between seven and twelve.

Q. What did you do then about medical treatment?

A. I reported to my timekeeper and he gave me a slip to the nurse.

Q. You were treated were you?

A. He just looked at me and I went back and it started to hurt again and the timekeeper sent me to him again and he said "I guess you have a hernia" and he recommended I be sent to the main-

(Testimony of Fred F. Laird.)

land, and they, the Contractors, sent me home through PNAB.

Q. And the wages were paid by Contractors?

A. Yes, sir.

Q. What was the wages?

A. The last wages I received from PNAB was December 5 on Johnston Island.

Q. And the Pacific Bridge Company work ceased when? A. January 28th.

Q. But you were given transportation by PNAB? A. Yes, sir.

Q. When did you return to California?

A. I think between February 8th and 9th.

Q. What have you done since you have come to California?

A. I first went to Dr. Burrows of Inglewood. He looked at me and said, "Without further examination I can't tell you what is wrong." I went back to him the second time and I had to get my family and on the way back my little boy was taken with a ruptured appendix and I was so taken up with him I forgot myself, and due to the operation on the boy I had to get some more work.

Q. Have you done any work since you came back to California?

A. I tried it. I worked from March 30th to and including June 15th I believe.

Q. What kind of work did you do?

A. I was in the assembly line at Northrup as a finisher.

(Testimony of Fred F. Laird.)

Q. How much did you get?

A. I think it was \$36.00.

Q. Were you able to do your regular work as a carpenter?

A. No, I was just able to use a little screw driver.

Q. What did you do on June 15th?

A. My back was getting worse all the time and I had to misrepresent to the Company in order to hold my job. I told them I had a cold. I was on and off and then gave it up.

Q. Then what did you do?

A. I went to Dr. Leslie Grant.

Q. What did he do?

A. He examined me and said, "There is something seriously wrong I am sure." He found a bad prostrate gland but didn't find the cause of it. He then referred me to Dr. G. Mosser Taylor, and he immediately found there was a rupture and operated immediately and a sciatic nerve was pulled out of my spine.

Q. Where were you operated on?

A. Centinela Hospital, Inglewood.

Q. When?

A. That was July 9th I believe.

Q. Are you getting along all right now from the operation?

A. Yes, my back is awful weak and I have a dull ache.

Q. Have you gone back to work? A. No.

Q. Did you take the matter up with either In-

(Testimony of Fred F. Laird.)

Insurance Company after you returned to California?

A. Yes, immediately after Dr. Taylor told me what was wrong I called both Insurance Companies.

Q. They didn't offer an operation?

A. No, sir.

Q. Now about the mention of hernia, have you had any hernia since last December?

A. No. I have a weakness there.

Q. You have no hernia at this time?

A. No.

Q. Is there anything else you wish to state about your case? A. No, sir.

The Deputy Commissioner: Mr. Bonnett any questions?

Mr. Bonnett: Yes.

Cross-Examination

By Mr. Bonnett:

Q. Was that a written contract you had?

A. Yes, sir.

Q. That was executed before you left here?

A. Yes, sir.

Q. You have a copy of the contract?

A. Yes, sir, at home.

Q. (By the Deputy Commissioner): That is one of the usual printed forms?

The Witness: Yes, sir.

Q. (By Mr. Bonnett): When you left Johnston Island you called on this Mr. Maxwell?

A. Mr. Nichols, Personnel Manager.

(Testimony of Fred F. Laird.)

Q. Did he send you to Mr. Maxwell?

A. Yes, sir.

Q. Then Mr. Maxwell put you to work on the Island?

A. No, he sent me to a fellow by the name of Carlson and Mr. Carlson referred me to the Pacific Bridge manager and they put me to work at Pacific Bridge.

Q. The doctor examined you did he?

A. He just looked at me. He took down the front of my clothes and said, "This is injured and that is why you have the pain." He wouldn't even look at my back due to the confusion, I suppose of the raid.

Q. This slipping in the oil, did your feet go out from you?

A. No. This right foot was in the puddle of grease which I didn't notice, and as I started to slip this right foot spread out.

Q. When you came back to the mainland did they give you a ticket?

A. No, they called us by numbers.

Q. What kind of ship?

A. I came on a transport. I was told I would receive my money from Honolulu but never received one dime.

Cross-Examination

By Mr. Weingand:

Q. Mr. Laird, going back to Johnston Island, that injury occurred in the morning did it?

(Testimony of Fred F. Laird.)

A. Yes.

Q. Did you go back to work that day?

A. I merely sat around, that is all.

Q. It was that night you first went to the male nurse Jeff?

A. No, I reported to him immediately after lunch and he was not there and I sat around the shop and Mr. Decker told me to go back to him at three o'clock.

Q. You didn't work on that day?

A. No, I didn't do any work.

Q. Were you there?

A. I reported to my foreman and gave him the slip Jeff had given me, and went back to my tent.

Q. When did you leave for Honolulu?

A. December 5th.

Q. Mr. Laird in order to get passage to Honolulu did you have to have any slip of paper signed by anyone?

A. Only that male nurse Jeff.

Q. Is that the one that has since committed suicide?

A. Yes.

Q. Do you recall what the slip said in substance Mr. Laird?

A. No, I don't.

Q. Did it say in substance you were to go to Honolulu to have your eyes examined and glasses fitted?

A. There was a slip given to me. He told the man he recommended I be sent to Honolulu.

Q. You don't remember the name of the man Jeff said this to?

A. No, I don't.

(Testimony of Fred F. Laird.)

Q. When did you go to Honolulu?

A. December 10th about 11:00 o'clock.

Q. Did you have your eyes examined?

A. Yes.

Q. And did you get glasses? A. Yes.

Q. Then on the 13th you went to Mr. Nichols of the Contractors PNAB and told him you were ready to go back to Johnston Island?

A. I didn't know I was injured as bad as I was and I told him I was ready to go back to Johnston Island and he said they were going to loan me to Pacific Bridge.

Q. What was the condition of your back between the time you left Johnston Island and arrived in Honolulu?

A. There was a deep pain in my back and in my hip.

Q. On the 13th of December you reported to work at this Dry Dock? A. Yes, sir.

Q. And you worked steadily from December 13th to January 13th?

A. No, not steadily. I was off every time I could get off and let my back rest.

Q. You said during that time from December 13th to January 13th you earned \$400.00?

A. Approximately.

Q. On January 13th Mr. Laird, was there any different kinds of pain experienced after your accident of that date?

(Testimony of Fred F. Laird.)

A. No, my right abdomen felt as if the pain was away deep in there and down my leg.

Q. And it was after January 13th you first felt the pain on the right side? A. Yes, sir.

Q. And it was after January 13th that you felt the pain radiate down your right leg?

A. That is right.

Q. Do you know Commissioner Schmitz?

A. Yes.

Q. Can you give us the date of your first conference with him?

A. It was after January 28th.

Q. When did you leave Honolulu for the mainland?

A. I think about the first of February.

Q. What was the purpose of your visit to Deputy Commissioner Schmitz?

A. When Dr. Alsup told me he recommended an operation I didn't think he knew what he was talking about and he told me he would recommend I be returned to the mainland and he told me to report to the Liberty Mutual Insurance Company and they told me I belonged to the U.S.F.G., and the U.S.F.G. told me I belonged to the Liberty Mutual.

Q. During any of your conversations with Deputy Commissioner Schmitz did you mention the fact that you had an accident while on Johnston Island? A. Yes, I did.

The Deputy Commissioner: Mr. Schmitz did not

(Testimony of Fred F. Laird.)

send me his file but I have here a document marked "Stipulations" of February 14, 1942, signed by Deputy Commissioner Schmitz. I will offer this at this time for introduction in evidence.

Mr. Weingand: No objection.

Mr. Bonnett: No objection.

The Deputy Commissioner: Received in evidence as Exhibit A. This refers to accident of January 13th. I can wire Deputy Commissioner Schmitz to ask if this earlier accident was mentioned to him.

Mr. Weingand: The reason I asked these questions, I have a wire from our representative in Honolulu in which he states Deputy Commissioner Schmitz stated there was never any mention made of his accident of December 2d.

The Deputy Commissioner: I wish to avoid delay and will wire Deputy Commissioner Schmitz to inquire if he made any mention of an earlier accident to Deputy Commissioner Schmitz.

Mr. Laird: There was never any note made. It was just informal.

Mr. Weingand (To Mr. Laird):

Q. Did you file a claim there?

A. Yes, I did and I told him I couldn't get any action on Johnston Island.

Q. When did you arrive in Honolulu?

A. December 10th.

Q. From December 10th until the date of your

(Testimony of Fred F. Laird.)

second alleged injury on January 13th did you go to any doctor?

A. No, I first acted on what the doctor told me on Johnston Island.

Q. Since July 8th has your condition improved or gotten worse?

A. It has improved. The pain in my leg has gone.

Q. And now your principal complaint I believe is weakness? A. Yes.

Mr. Weingand: That is all Mr. Pillsbury. I would like to have the claimant examined by a doctor of our own selection.

The Deputy Commissioner: Very well.

LARRY DECKER

a witness produced on behalf of Claimant, being first duly sworn by the Deputy Commissioner, testified as follows:

Direct Examination

By the Deputy Commissioner:

Q. What is your full name?

A. Larry Decker.

Q. Your address Mr. Decker?

A. 211 E. 55th Street, Los Angeles.

Q. Do you know Mr. Laird here?

A. Yes, sir.

Q. Were you working with him on Johnston Island or Pearl Harbor?

(Testimony of Larry Decker.)

A. I was a metal foreman and he worked under me at Johnston.

Q. Do you know of the accident of December 2d?

A. Yes, I asked the boss to shove the derrick ahead so we could put the truck in. One of the boys slipped and he got the weight of it. He came in and sat down and I said "Did it get you?" and he said "Yes, I have got a pain in my back" and I told him to see Jeff. He went down and he wasn't there and he came back and sat down and after awhile I said, "You better go back again to see him."

Q. Do you know why Mr. Laird was returned to Honolulu?

A. They had intended to send him to get glasses but didn't intend to send him then.

Q. Did you have any conversation with this nurse?

A. Yes. He said "I don't think I can do anything but put a light on it." He wasn't a doctor.

Q. Was Mr. Laird able to do anything after this accident?

A. Oh, no, he stayed in his tent. He got a slip from the assistant paymaster that he was not able to work. I had to send that in with the payroll.

Q. Did you send that in with the payroll?

A. Yes.

The Deputy Commissioner: Mr. Blek, any questions?

(Testimony of Larry Decker.)

Mr. Blek: No questions.

The Deputy Commissioner: Mr. Bonnett, any further questions?

Mr. Bonnett: No.

The Deputy Commissioner (to Witness): Did you work with him at Pearl Harbor?

The Witness: No.

Mr. Weingand: Did you see him slip?

The Witness: I saw a fellow slip and he must have caught the weight of it.

Mr. Weingand: Mr. Pillsbury, may we have five days after filing of reports?

The Deputy Commissioner: Yes.

Mr. Weingand (to the Deputy Commissioner): When you wire Mr. Schmitz will you try to get a report of Dr. Alsup?

The Deputy Commissioner: Yes. File to be submitted for decision upon filing of the further report mentioned by Mr. Weingand if no request is received from Mr. Weingand after receipt of report and receipt of wire from Deputy Commissioner Schmitz in answer to wire I will send him.

Attorney's fee requested by Claimant's Attorney, Mr. Blek.

REPORTER'S CERTIFICATE

I Hereby Certify that the foregoing is a true and correct transcript of the testimony and proceedings at the hearing held at Hearing Room of State Industrial Accident Commission, Los Angeles, California, on the 18th day of August, 1942.

/s/ SARA T. LONGLEY,
Reporter.

Filed Sept. 10, 1942.

Copy forwarded to Washington.

Received Sept. 9, 1942, District No. 13.

United States Employees' Compensation Commission,
Before Warren H. Pillsbury, Deputy
Commissioner, 13th Compensation District

Case No. BA-8, Claim No. DB-13

FRED F. LAIRD,

Claimant,

vs.

CONTRACTORS, P N A B and BUILDERS
PEARL HARBOR DRY DOCK No. 4,
Employers,

LIBERTY MUTUAL INSURANCE CO., U. S.
FIDELITY & GUARANTY CO.,
Insurance Carriers.

TRANSCRIPT OF TESTIMONY AT
HEARING

Sept. 15, 1942

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at Hearing Room Industrial Accident Commission, Los Angeles, California, on the 15th day of September, 1942, at 2:30 p.m.

Appearances

Claimant present in person and represented by Mr.
C. L. Bleck, Atty. at Law, Inglewood, California.

Defendants Contractors PNAB & U. S. Fidelity and Guaranty Co., represented by Mr. F. W. Bunnett, Atty., Los Angeles, California.

Defts. Builders Pearl Harbor & Liberty Mutual Ins. Co., represented by Mr. Claude F. Weingand, Atty., 939 Rowan Bldg., Los Angeles, California.

Deputy Commissioner Pillsbury:

Mr. Weingand requests a continuance for approximately two weeks to my next trip, stating an agreement has been made between himself and Mr. Bunnett that each will recommend to his respective insurance carrier to pay \$100.00 to Mr. Laird without prejudice and on account. Mr. Blek agrees in the request on this understanding, and Mr. Laird also states that he is satisfied to have the continuance granted. If possible the parties are to mail their further medical evidence to me before my next trip and It Is Stipulated that if I receive from Mr. Blek and Mr. Weingand further documentary evidence with service of copy on each other, and consent to an immediate decision, that a further hearing may be cancelled and decision issues at once.

REPORTER'S CERTIFICATE

I Hereby Certify that the foregoing is a true and correct transcript of the testimony and proceedings at the hearing held at Hearing Room of State Industrial Accident Commission, State Building, Los Angeles, California, on September 15, 1942.

/s/ SARA T. LONGLEY,
Reporter.

Filed Oct. 13, 1942.

Copy forwarded to Washington.

Received Oct. 3, 1942, District No. 13.

United States Employees' Compensation Commission Before Warren H. Pillsbury, Deputy Commissioner, 13th Compensation District.

Case No. DB-8, Claim No. DB-13

FRED F. LAIRD,

Claimant,

vs.

CONTRACTORS, PNAB, and BUILDERS
PEARL HARBOR DRY DOCK No. 4,
Employers,

LIBERTY MUTUAL INSURANCE CO., U. S.
FIDELITY & GUARANTY CO.,
Insurance Carriers.

TRANSCRIPT OF TESTIMONY AT
HEARING

October 5, 1942

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at Hearing Room of State Industrial Accident Commission, State Building, Los Angeles, California, on the 5th day of October, 1942, at 2:30 p.m.

Appearances:

Claimant present in person and represented by Mr. C. L. Blek, Attorney, 349 E. Manchester Avenue, Inglewood, California.

Defendants represented by Mr. Donn Downen, Attorney, appearing for Mr. Claude F. Weingand, Atty., 939 Rowan Building, Los Angeles, California.

FRED F. LAIRD

Deputy Commissioner Pillsbury (to Claimant):

Q. Did you receive, Mr. Laird, \$100.00 on account from each of the Insurance Companies?

A. Yes.

The Deputy Commissioner: Mr. Downen offers report of Dr. Mark A. Glaser of September 8, 1942. Received in evidence as Exhibit "A" of this date.

(To Mr. Downen): Mr. Downen, have you anything further to offer?

Mr. Downen: Yes.

The Deputy Commissioner: Before that, I understand from the recent medical report of the operating physician that Claimant needs another operation. Does claimant wish to have another operation?

Mr. Blek: He doesn't want it unless it is necessary. He wants to get well.

The Deputy Commissioner (to Claimant): Are you asking for another operation, Mr. Laird?

Mr. Laird: If it is necessary.

The Deputy Commissioner: Mr. Downen, do you want to offer the operation?

Mr. Downen: The controversy as I have it is twofold—first, whether or not another operation is necessary and if Claimant is entitled to it and if he

(Testimony of Fred F. Laird.)

is, who will bear the expense and that involves the question of each accident. In the event we are found liable for it we will offer the operation ourselves.

Cross-Examination

By Mr. Downen:

Q. Mr. Laird, you remember that on July 7, 1942, a representative of the P.B.A.N. called upon you and took a statement of this accident?

A. Yes.

(Mr. Downen hands statement to Mr. Blek to read.)

Q. You have read the statement here and is the same statement which was taken from you on July 7th?

A. Yes.

Mr. Downen: I will offer this in evidence. There is no signed signature but he has identified it as being the same statement.

The Deputy Commissioner: Who is the representative who took the statement?

Mr. Downen: I don't know but I can check that from the file if you wish.

Q. The Deputy Commissioner (To Claimant): Mr. Laird have you read this statement from the handwriting of the adjuster in full?

A. Not the handwriting but I have read the printed statement.

Q. Do you believe the statement you made is true?

A. There is only one thing that I think he mis-

(Testimony of Fred F. Laird.)

understood me, that is he says I didn't report the accident. I did.

The Deputy Commissioner: With that explanation of the witness I will receive the statement as Exhibit "B".

Cross-Examination (Continued)

By Mr. Downe:

Q. When you went to Dr. Glasser did he have a copy of the statement? A. Yes.

Q. Did he ask you if that was a correct statement? A. I don't believe he did.

Q. Did you tell him that was a correct statement?

A. I told him I gave that statement before but at the time I was a little hazy.

Q. There is a typed copy attached to the statement. You state (Reading from statement): "While we were lifting the derrick I felt a very sudden sharp pain in my back. It came on when I was lifting on that derrick for the first time. The pain was right in my backbone and about two inches above my hip line. I continued lifting but did not do much. I played off on the boys. After the derrick got moved I went back to filing saws. This all happened about 11:00 A.M. or thereabouts. I am not sure of the time. That evening I reported to the First Aid Station but there was no doctor. The male nurse gave me a heat treatment. He was the first one I reported the accident to."

Is that substantially a correct statement of what happened? A. Yes.

(Testimony of Fred F. Laird.)

Q. In other words about 11:00 o'clock in the forenoon you got a sharp pain in your back. Is that correct? A. That is right.

Q. After the derrick got moved you went back and started to file saws for the rest of the day?

A. No, I went back to filing saws and told Mr. Davis and he immediately told me to report to the First Aid man.

Q. What did you do?

A. I went to report and he wasn't there. I think I went just before lunch and he wasn't there and I went back after lunch and he still wasn't there.

Q. And after that you went back to filing saws?

A. No, I never worked another lick.

Q. This is substantially correct as I continue: "The next day I waked up and had a burning sensation running from the point where I had the original pain running across my right hip and down my right leg in the side and back of the leg about $\frac{1}{3}$ of the way down to my knees. I went to the First Aid nurse and got two heat treatments that day. That evening he called the Marine Doctor from Sand Island who examined me and said I had a sacroiliac slip. He recommended more heat treatment. I continued with the heat treatments for three days." That was the 3d, 4th and 5th?

Mr. Blek: The accident was on the 2d.

The Witness: The accident was on December 2d.

Q. The next treatment would be on the 3d and

(Testimony of Fred F. Laird.)

you were seen by the Marine Doctor on the 3d. Is that correct? A. I believe it was.

Q. You continued with the heat treatments until you left? A. Yes, sir.

Q. (Reading from statement): "My eyes were bad from saw filing and I got leave to go to Honolulu to get glasses fitted. I left Johnson Island December 5, 1941 and got in Honolulu on December 10, 1941." Is that correct?

A. Yes, only the nurse said "so long as you are not able to work you might as well get your glasses and come back."

Q. You subsequently went to Honolulu and got your glasses fitted? Is that correct? A. Yes.

Q. Then on Dcember 13, 1941 you said, "I went to Mr. Nichols and he told me 'You ain't going back to Johnson Island.'" He said, "I am going to loan you to Pacific Bridge." Did that occur?

A. Yes, and he said "Go on out."

Q. You went to Johnson Island? A. Yes.

Q. You went to work as a carpenter?

A. I tried but couldn't and they put me on as a carpenter foreman.

The Deputy Commissioner (To Mr. Downen): You are reading almost the entire statement.

Mr. Downen: As you will notice, the report of the doctor which was filed today was predicated on this history.

The Deputy Commissioner: He has stated he made this statement with one modification. If there

(Testimony of Fred F. Laird.)

is anything of any importance you may bring it out but I will ask you not to read the whole statement.

Mr. Downen: Very well. No further examination along that line.

Q. (By Mr. Downen): I notice you went to work after you arrived on the mainland for Northrup Aviation and I notice there were two or three weeks you were off.

A. I was off two weeks solid and then was off from time to time until I had to quit, doing my best to make my family a living.

Q. I notice in Dr. Collins' report during the time you were off you received some payments from Northrup? A. That was Group Insurance.

Q. What sort of report did you make to entitle you to those payments?

A. I told him I was pretty hard up and he said: "I will pay it and if we are not liable we will trust you to pay it back."

Q. Do you recall what type of policy this was?

A. There is three different policies. There is hospital and weekly benefit and sick and accident.

The Deputy Commissioner: I am not particularly interested as to what type of insurance it is.

Mr. Blek: As a matter of fact they are now demanding all the money back.

The Deputy Commissioner: That is immaterial.

Mr. Downen: Apparently they did not pay unless they had a report of an accident and we want to find out if there was a subsequent accident.

(Testimony of Fred F. Laird.)

The Deputy Commissioner: I think you better do your investigating outside the record of this case.

(Discussion off record.)

Q. (By Mr. Downen): Did you suffer any further injury or strain to your back during the time you were working at Northrup Company?

A. All I suffered was from the accident I had prior to my coming there.

The Deputy Commissioner: Did you have any new accident?

The Witness: No, sir, I didn't. All I handled was a screwdriver that long (indicating four inches).

Mr. Downen: I will ask for a continuance.

Redirect Examination

By Mr. Blek:

Q. As a matter of fact they have demanded the money back they advanced to you claiming you are not entitled to it? Is that right?

A. That is correct.

Mr. Blek: I think this has gone on a long time and the matter should be submitted.

The Deputy Commissioner: This is the fourth hearing and after the third hearing I get increasingly reluctant to further continuance.

Mr. Downen: I am asking for a hearing at Honolulu. We have certain evidence there we deem important.

The Deputy Commissioner: I think after four hearings you should file a statement of merits in

(Testimony of Fred F. Laird.)

regard to your request. Claimant is in need of decision. You may file with me within five days a statement of the name of each witness and what you expect to prove by him.

Mr. Downen: I believe there was an advance made in this case.

Mr. Blek: Yes, \$100.00 from each Company.

The Deputy Commissioner (To Mr. Downen): Will you accompany your request with an agreement to pay further compensation during the time the matter is pending?

Mr. Downen: Yes, we will file an agreement.

The Deputy Commissioner: If compensation is paid there will be no hardship.

Mr. Blek: If they will make some arrangement to pay Mr. Laird reasonable compensation we have no objection to continuance.

The Deputy Commissioner: They if such an undertaking is made and the request shows there is some relevancy for a continuance I will take the matter under consideration. Hearing closed except for the possibility of further proceedings in Honolulu.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript of the testimony and proceedings at the hearing held at Hearing Room of State Industrial Accident Commission, on the 3d day of October, 1942.

/s/ SARA T. LONGLEY,
Reporter.

EXHIBIT "A"

Hearing 10/5/42

Case No. BA-8 Fred F. Laird

(Excerpt from report of Dr. M. A. Glaser dated Sept. 8, 1942.)

* * *

Discussion:

Mr. Laird still complains of some dull aching pain and stiffness particularly upon bending, however, there is an absence of pain radiating down into his foot. Today, 9-14-42, he reported to my office and states that for the past three or four days he has had more intense pain in the "joint where the ring was taken out", and when he coughs it feels "like it is breaking in two". His back still bothers him sufficiently to keep him from performing even light work because he states that if he is on his feet any length of time he develops a headache and has aching in his back which is weak.

It is my opinion Mr. Laird is still disabled for the performance of his work as a carpenter foreman. This disability is due to a residual of a ruptured intervertebral disc as a developing psychoneurosis. His headaches are not due to any back disability but are caused by neurotic manifestations.

It is my opinion that at the time of his first injury 12-2-41 that without doubt the ligaments that support the nucleus pulposus were weakened. At this time he did not have a complete rupture of the nucleus pulposus because if this had occurred the

Exhibit A—(Continued)

pain would have been so intense he could not have continued working the remainder of the day. He stopped work the next day. On December 14th or 15th he returned to work as a carpenter foreman and continued working until January 13, 1942 when he was again carrying out some lifting and had a recurrence of his pain, however, he continued working until January 28, 1942 at this time he started to return to the mainland.

In view of the history of these two injuries it is further my opinion the first injury caused a beginning weakness of the ligaments supporting the nucleus and the second injury completed the relaxation of the ligaments. These two injuries together resulted in such a relaxation of the ligaments supporting the nucleus that a gradual complete rupture occurred. As a matter of fact a ruptured intravertebral disc may occur without injury and be due to a degenerative process. I do not see how any surgeon can place the cause of a ruptured intravertebral disc upon either of these injuries to the exclusion of the other when we know these ruptures may occur spontaneously without the history of injury.

Present Disability:

Total for the next three to six months. If his nervousness increases disability may be prolonged.

Permanent Disability:

I do not look forward to any permanent disability.

Exhibit A—(Continued)

Treatment:

He should wear a support as he is now doing, perform exercises to strengthen his back, and have sedatives for his nervousness. If his nervousness increases I would recommend settlement of this case.

Mark Albert Glaser, M. D.

1118 Roosevelt Building

Los Angeles, Calif.

September 8th, 1942

Injured

Laird, Fred. Age 31.

Referred by

Mr. C. Weingand

Examined at

Office, 9/8/42.

Employer

Contractors Pacific Naval Air Base

Date of Injury

December 2, 1941

Occupation

Carpenter

Complaint

1. Stiffness of back.
2. Pain in back.
3. Back feels weak.

Exhibit A—(Continued)

Diagnosis

1. Residual of a ruptured intervertebral disc.
2. Beginning psychoneurosis.
3. Spinal fusion absorbed.

Family History

Mother died at 53, pneumonia; father died at 43, pneumonia. Four brothers and one sister living and well. One brother and one sister deceased.

Familial diseases—0.

Marital—married at 19, wife living and well at 31, patient has a son 7 years old and a stepson 13 years old.

Past History

Born in Phelps, Missouri, November 11, 1910.

Residence and occupation—0-29 Missouri, 8th grade, filling station attendant, marble worker, carpenter, construction work. 29-31 California, worked for the American Alumnin Co., October 27, 1940 to May 6, 1941. On May 8, 1941 went to Johnston Island, T. H., worked as a carpenter and returned to California on February 19, 1942.

Diseases—Chickenpox, measles, mumps. Venereal—denied.

Habits—Coffee, 1 cup a day. Tea—0. Alcohol—0. Tobacco—10 cigarettes a day. Narcotics—0.

Accidents—0.

Exhibit A—(Continued)

Operations—Laminectomy, July 9, 1942, Dr. M. Taylor, Dr. Leslie Grant and Dr. A. J. Neufeld.

General

Appetite—Normal. Sleep—Fair. Bowels—Normal. Nocturia—0.

Present Illness

In as much as my conclusions (which are set forth in this report under the caption discussion) are in no small part based upon the history given by the patient and in order to rule out the possibility of error in diagnosis, primarily predicated upon a faulty or incomplete history I exhibited to Mr. Laird the original of this statement dated July 7, 1942, which Mr. Weingand forwarded to me prior to the date of my examination and asked Mr. Laird if the facts and information in the statement contained were true and represented his exact complaints as they occurred. He replied in the affirmative. This statement of the facts involving Mr. Laird's two claimed accidents reads as follows:

“Report of Fred L. Farid, born on Nov. 11, 1910 in Phelps, Missouri. I am married and have two boys. I live at the above address. On April 27, 1941 I signed a contract to work for the Pacific Naval Air Bases, Contractors as a painter's helper at a wage of \$135.00 a month and subsistence. I sailed on the S. S. Matsonia from Wilmington, Calif. on May 8, 1941. I arrived in

Exhibit A—(Continued)

Honolulu, Hawaii T.H. May 14, 1941 and left there on June 13, 1941 for Johnson Island and arrived June 15, 1941. I did no work at all in Hawaii. I was paid in full for this time. I worked a while as a painter on Johnson Island after my arrival I was made a carpenter at a wage of \$200.00 a month plus time and one half for overtime and subsistence. I worked steadily until sometime in July, 1941 when I got food poisoning. I was off work two or three days but was paid full wages. About 400 of us were laid up at that time. I went back to work and worked steadily as a carpenter until early in December of 1941. One day in December (before December 7, 1941) I was working in the carpenter shop. Leroy Decker was with me. There was a steel stiff leg derrick lying in the ground in front of the shop. It was going to be used to put up an oil tank. Its weight was between 1200 and 1500 lbs. It is constructed of two steel shafts forming an "L" which cable to turn the cross arm. It is used to pick up sheet iron. This was lying in front of the entrance of our shop. A truck came to haul away scrap and the driver wanted to back into the shop but the stiff leg derrick was in the way. About ten of us men among whom was Robert McDonald. He is now somewhere in Alaska. Leroy Decker was also there. L. M. Mathes was also there. They are the only ones whose names I recall. We all straddled the der-

Exhibit A—(Continued)

rick. We then bent down with knees bent. We lifted the derrick about 6 inches off the ground and carried it a few inches and let it down. We then carried and dragged it about 15 or 20 feet. I was asked to do this by Leroy Decker. He called me off my job of filing saws to do the lifting. I was in the back end of the derrick. While we were lifting the derrick I felt a very sudden sharp pain in my back. It came on when I was lifting on that derrick for the first time. The pain was right in my backbone and about 2 inches above my hip line. I slacked loose of the derrick but did not let go completely. I did not say anything about it. I had the severe sharp pain for most of the day. I continued the lifting but did not do much. I played off on the boys. After the derrick got moved I went back to filing saws. This all happened about 11:00 A.M. or thereabouts. I am not sure of the time. That evening I reported to the first aid station but there was no doctor. The male nurse gave me a heat treatment. He was the first one I reported the accident to. The next day I woke up and I had a burning sensation running from the point where I had the original pain running across my right hip and down my right leg in the side and back of the leg about $\frac{1}{3}$ of the way down to my knee. It is hard to say just where it was. I was unable to work. I could not bend and walked only with great difficulty. I went to the first aid nurse

Exhibit A—(Continued)

and got two heat treatments that day. That evening he called a marine doctor from Sand Island who examined me and said I had a sacroillac slip. He recommended more heat treatment. I continued with the heat treatments for three days. My eyes were bad from saw filing and I got leave to go to Honolulu to get glasses fitted. I left Johnson Island Dec. 5, 1941 and got in Honolulu on Dec. 10, 1941. I did not work at all on Johnson Island after the day of my accident. I was paid in full through that time. The agreement on Johnson was that I was to return. I got a pay check at the Contractor's Hotel. On December 13, 1941 I went to the personal office of the Contractor's. I told Mr. Nichols I was ready to go back to Johnson. I had seen no doctor about my back. I had my glasses fitted before I went to Mr. Nichols. He told me "You aint going back to Johnson Island". He said "I am going to loan you to Pacific Bridge." My hiring number was 27463 and I reported for work on Dec. 14, 1941 or Dec. 15, 1941. I was a carpenter foreman with a wage of \$1.25 per hour and time and a half for overtime. I made about \$117.00 to \$119.00 a week. I still had an uncomfortable feeling in my back. I never mentioned my accident to Mr. Nichols. The Pacific Bridge changed the name to Builders Drydock #4 at the first of the year. I then got a #943. I still got my pay from Pacific Bridge under #27463. Every week or

Exhibit A—(Continued)

two I got a number. I worked steadily until January 13, 1942. On that day we had a there was a section about 14 feet long and 7 feet high with 2x6 studding. There was a double 2x6 plated top and bottom. It was boxed up with ship laps. This was of wood. A bunch of us were to lift this. L. M. Mathis was there at the time. The section was blocked up. We all got along one side and bent down to lift up the section to turn it over into another section to form a stack. As I was lifting up I got the same pain again except it was also over my right front hip and right groin. I had my right foot in an oil spot from where we had greased the form and when the pressure came on, my right foot slipped backward when it got to the dry cement it caught and that is when I felt the pains. I let go of the form and quit doing the lifting. I went back to being foreman instead of giving the boys a lift. I had not done any lifting before because my back was not feeling right and I kept away from it as much as I could. I reported to Geo. McLanahan the time keeper of the Builders Pearl Harbor Dry Dock #4. I reported to him Jan. 13, 1942. The accident occurred about 8:00 A.M. and I reported it about 11:00 A.M. He sent me to the Alsup Clinic thinking I was a PNAB man which I was supposed to be. I was paid by Pacific Bridge in error. He examined me and said I probably tore a ligament in my right side and sent me back to

Exhibit A—(Continued)

work. I worked to Jan. 28, 1942 as best I could. On a second visit to Dr. Alsup he said "It looks like you are going to have a hernia and we will have to operate and fix it." I said I wanted to go to the mainland for an operation. I saw Mr. Baine and Platt at the contractors and told them what the Alsup Clinic told me. They said I should get a letter from Dr. Alsup saying I was unable to work and recommend I be returned to the mainland. This was after January 28 when I was unable to work. The same pain in my back was present. Baine and Platt said I would be put back in PNAB payroll and would pay my full wages (\$200.00) a month until I got to the states. I arrived in San Diego on February 14, 1942. I have been paid only through January 25, 1942. I had a hearing in Honolulu but was not present as it was not to be held Feb. 24, 1942. This was held by Commissioner Schmitz. I was all in after my arrival in the states and did not work until March 30, 1942. I went to work for Northrup Aviation in Hawthorne. I worked until June 4, 1942 and have done no work since. Between March and June 4 I was off work 2 wks. a day or so at a time in addition. I was off about 3 weeks in all. I did not trust myself there. I did no lifting or any heavy work there at all. I went to Dr. Leslie Grant, 3130 So. Manchester on June 3, 1942. I have been under his care ever since. I went to Dr. Thompson, 920 La Brea Inglewood

Exhibit A—(Continued)

one day last week. I was sent to Dr. G. Mosser Taylor Wilshire Blvd., by Dr. Grant. He said I had a ruptured disc in my back. I thought it was a typical case. No time for the operation has been set but it will be in the next few days. I never had had any trouble with my back before Dec. 1941. I have never had any other accidents than described in this report. Before going with PNAB I worked for Aluminum Co. of America. I was with them from Oct. 1940 until May 1941. Before that I was with Carthage Marble Corp. of Carthage, Mo. I was with them for almost ten years. I worked there from 1929 until June 1940. I have received no pay from PNAB since Dec. 5, 1941. I was paid full wages by Pacific Bridge from Dec. 14, 1941 through January 25, 1942. Since Jan. 28, 1942 I have received no pay from either. I am still owed wages from Jan. 28 to Feb. 14 at \$200.00 a month plus a \$45.00 bonus. I have received no compensation insurance from any company from my injury. My back is getting worse all the time."

On July 9, 1942, laminectomy was carried out and a disc was removed. Since then Mr. Laird states that he is very much better but he has a dull aching, and stiffness in his back and has shown some improvement but has not improved sufficient to permit him to return to work. Now he states his back is stiff, feels weak and when he bends to either side or forward and backward

Exhibit A—(Continued)

he has pain, between the 4th and 5th lumbar. Prior to the operation the pain was always present and there was a burning sensation radiating down the right thigh to the knee, then down both sides of the leg and into arch of the foot. Since the surgery the pain and burning have subsided and this pain and burning down the leg have "all gone". Now there is stiffness of the back and if he exerts himself there is a tension and drawing in his back and it feels like he is forcing something. If he is on his feet any length of time he has a headache and has an aching in his back.

He further states that anytime after a year he will be able to do light work without any bending. It is very disagreeable to try and work with the brace, and if he leaves the brace off the muscles draw up and he is afraid that if he relaxes his muscles something will happen and he feels like something is going to give away and his head will start to ache. Mr. Laird states that he is still very nervous and any excitement "sets me to shaking all over".

Physical Examination

General

Ambulatory. Weight 140 pounds, height 5'7 $\frac{3}{4}$ ".

Blood pressure 115/80.

Skin

Normal.

Exhibit A—(Continued)

Hair

Normal.

Eyes

Normal.

Lymph Nodes

Normal.

Ears

Cerumen in right ear, tympanic membrane not visible. Left normal.

Nose

Normal.

Mouth

Teeth—in good condition. Tonsils—buried, cryptic.

Neck

Normal.

Chest

Normal.

Abdomen

Scar right upper abdomen.

Vascular

Normal.

Genitalia

Normal.

Rectal

Not examined.

Exhibit A—(Continued)

Spine

Laminectomy scar, tenderness over this scar. V shaped scar over the sacrum. Bend forward to within 40 cm. of the floor. Bending to the right, to the left and backward is limited. Straight leg raising to 120 degrees on the left and 110 degrees on the right causes back pain. Knee to abdomen on the right and left is painful. Bends 10 degrees more on the left than on the right. Lies down on examining table easily because of back.

Extremities

Tattoo mark on left arm.

Supports

Wears a back brace.

Neurological Examination

Head

Normal as to shape and size.

Cranial Nerves.

- I. Olfactory: Normal.
- II. Optic: Normal.
- III. Oculo-Motor: Normal.
- IV. Trochlear: Normal:
- V. Trigeminal: Normal.
- VI. Abducens: Normal.
- VII. Facial: Normal.
- VIII. Acoustic: Tuning-fork #256 heard 4 cm. from both ears.
- IX. Glossopharyngeal: Normal.

Exhibit A—(Continued)

- X. Vagus: Normal.
 XI. Spinal Accessory: Normal.
 XII. Hypoglossal: Normal.

Cerebrum

- I. Frontal: Normal.
 II. Central: Right handed. Grip 165 right hand; 180 left hand.
 III. Parietal: Normal.
 IV. Temporal: Normal.
 V. Occipital: Normal.

Cerebellum

Normal.

Miscellaneous

- I. Speech: Normal.
 II. Tremor: Negative.
 III. Gait: Limps.
 IV. Signs: Negative.

Reflexes	Right	Left
Biceps	xx	xx
Radial	xx	xx
Ulnar	xx	xx
Triceps	xx	xx
Upper abdominals	xx	xx
Lower abdominals	xx	xx
Cremasteric	xxxx	xxxx
Patellar	xxx	xxx
Achilles	0	xxx
Pathological Reflexes	0	0

Exhibit A—(Continued)

Motor

Limitation of back movements in all directions.

Sensory

Sensation diminished over the right leg posteriorly and anteriorly from the knee to the toes.

Laboratory Report Mona E. Bettin, M.D. 9-9-42

Wassermann test on blood serum—negative.

Precipitation test—negative.

X-Rays Rolla G. Karshner, M.D. August 24, 1942

“Roentgen examination including anteroposterior stereo and lateral projections of the lower dorsal, lumbar and lumbosacral spine reveals no evidence of fracture, dislocation or other injury to any bone or joint. There is no gross anomaly.

There is evidence of hypertrophic arthritis manifested by slight sharpening of vertebral margins. There is increased density over the articulations between the fifth lumbar vertebra and the sacrum indicating a hypertrophic arthritic process. There is hypertrophic bony deposit about the margins of the upper portion of the right sacroiliac joint. The arthritis is of origin prior to the alleged injuries of 12-2-41 and 1-13-42. The space between the fourth and fifth lumbar vertebrae is clear. I cannot demonstrate defect in either lamina of either the fourth or fifth lumbar vertebra. In lateral projection I get the impression that the tip of the spinous process of the fifth lumbar vertebra may have been whittled off a bit; in anterioposterior projection there is a

Exhibit A—(Continued)

rectangular bony shadow approximately one centimeter in its greater diameter between the spinous process of the fifth lumbar vertebra and the spinous process of the first sacral segment. I cannot say that it is connected by bony union to either vertebra.”

X-Rays Edward S. Blaine, M.D. (9-14-42)

“X-ray shadows appear to represent an essentially normal bone and joint anatomy of the lumbosacral structures. There are minor amounts of hypertrophic osteoarthritis at edges of several of the articular surfaces of lower lumbar and sacroiliac joints. The intervertebral cartilage spaces are clear and of normal size. The spinous processes and the lamina portions of each of the lower lumbar vertebrae appear to be intact. I find no shadow indication of changes such as would represent operative procedure in the regions included in this examination. Stereoscopic anteroposterior and lateral projections plus a special sagittal view from below upwards, all represent normal findings.”

Discussion

Mr. Laid still complains of some dull aching pain and stiffness particularly upon bending, however, there is an absence of pain radiating down into his foot. Today, 9-14-42, he reported to my office and states that for the past three or four days he has had more intense pain in the “joint where the ring was taken out”, and when he

Exhibit A—(Continued)

coughs it feels "like it is breaking in two". His back still bothers him sufficiently to keep him from performing even light work because he states that if he is on his feet any length of time he develops a headache and has aching in his back which is weak.

It is my opinion Mr. Laird is still disabled for the performance of his work as a carpenter foreman. This disability is due to a residual of a ruptured intervertebral disc as well as a developing psychoneurosis. His headaches are not due to any back disability but are caused by neurotic manifestations.

It is my opinion that at the time of his first injury 12-2-41 that without doubt the ligaments that support the nucleus pulposus were weakened. At this time he did not have a complete re-rupture of the nucleus pulposus because if this had occurred the pain would have been so intense he could not have continued working the remainder of the day. He stopped work the next day. On December 14th or 15th he returned to work as a carpenter foreman and continued working until January 13, 1942 when he was again carrying out some lifting and had a recurrence of his pain, however, he continued working until January 28, 1942 at this time he started to return to the mainland.

In view of the history of these two injuries it is further my opinion the first injury caused a beginning weakness of the ligaments supporting

Exhibit A—(Continued)

the nucleus and the second injury completed the relaxation of the ligaments. These two injuries together resulted in such a relaxation of the ligaments supporting the nucleus that a gradual complete rupture occurred. As a matter of fact a ruptured intravertebral disc may occur without injury and be due to a degenerative process. I do not see how any surgeon can place the cause of a ruptured intravertebral disc upon either of these injuries to the exclusion of the other when we know these ruptures may occur spontaneously without the history of injury.

Present Disability

Total for the next three to six months. If his nervousness increases disability may be prolonged.

Permanent Disability

I do not look forward to any permanent disability.

Treatment

He should wear a support as he is now doing, perform exercises to strengthen his back, and have sedatives for his nervousness. If his nervousness increases I would recommend settlement of this case.

/s/ MARK ALBERT GLASER, MD.

Filed Oct. 23, 1942.

Copy forwarded to Washington.

Received Oct. 23, 1942. District No. 13.

United States Employees' Compensation
Commission, Before Warren H. Pills-
bury, Deputy Commissioner
13th Compensation District

Case No. DB-P-1-715

FRED F. LAIRD,

Claimant,

vs.

BUILDERS, PEARL HARBOR DRYDOCK #4,
also known as PACIFIC BRIDGE CO.,
Employer.

U. S. FIDELITY & GUARANTY CO.,

Insurance Carrier.

FRED F. LAIRD,

Claimant,

vs.

HAWAIIAN DREDGING COMPANY, also
known as CONTRACTORS, PACIFIC
NAVAL AIR BASES,

Employer.

LIBERTY MUTUAL INSURANCE COMPANY,

Insurance Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice, this matter was heard before
Warren H. Pillsbury, Deputy Commissioner, United

States Employees' Compensation Commission, at Room 406, United States Post Office Building, Los Angeles, California, on Monday, the 13th day of September, 1943, at 4:00 P.M.

Appearances

Claimant present in person and represented by Mr. C. L. BLEK, attorney at law.

Defendants, Pacific Bridge Company and U. S. Fidelity & Guaranty Company represented by Mr. F. W. BONNETT, attorney at law.

Defendants, Hawaiian Dredging Company and Liberty Mutual Insurance Company represented by Mr. C. F. WEINGAND, attorney at law.

Mr. Pillsbury: Hearing on application for allowance of certain medical bills. Claimant present in person, and represented by Mr. C. L. Blek, attorney at law, Inglewood, California.

Defendants, Pacific Bridge Company and U. S. Fidelity & Guaranty Company represented by Mr. F. W. Bonnett, attorney at law.

Defendants, Hawaiian Dredging Company and Liberty Mutual Insurance Company represented by Mr. C. F. Weingand, attorney at law.

In this case I entered compensation orders in each proceeding upon a consolidated transcript on November 3, 1942. It appeared that claimant's disability for which the claim was brought was the combined result of two accidents, one sustained in

each employment. In my first order I awarded compensation at the rate of \$12.50 a week until further order against Builders, Pearl Harbor Drydock No. 4 and U. S. Fidelity & Guaranty Company. In the second order I awarded compensation at the rate of \$12.50 a week against Contractors, Pacific Naval Air Bases, and Liberty Mutual Insurance Company. Each order was for one-half of the compensation payable for total disability. I note at this time that there has been some confusion in the titles in the transcript of testimony with reference to the correct name of each of the two employers, which should be corrected. I understand that Builders, Pearl Harbor Drydock #4 is a subsidiary, or another name for Pacific Bridge Company. Is that correct, Mr. Bonnett?

Mr. Bonnett: I think that is correct.

Mr. Pillsbury: And which title would you prefer to have in the future orders?

Mr. Bonnett: Pacific Bridge.

Mr. Pillsbury: Stipulated that the orders from now on may refer to said employer under the name of Pacific Bridge Company.

With reference to the employer in the second case, it appears to have been variously described as Hawaiian Dredging Company and Contractors, Pacific Naval Air Bases. I understand that the latter is correct in that Contractors, PNAB has carried the contracts for a number of associated companies, including Hawaiian Dredging.

Mr. Weingand: That is correct.

Mr. Pillsbury: Stipulated that the true name of the employer to appear in the record from now on may be Contractors, Pacific Naval Air Bases?

Mr. Weingand: So stipulated.

Mr. Pillsbury: It is understood that the insurance of the employers as hereinbefore found is undisputed, each insurance policy protecting each employer under each name.

With reference to the request for allowance of further medical bills, it is stipulated after informal discussion that an order may be entered, or the Deputy Commissioner may advise the defendants informally that further sums incurred by claimant for medical treatment may be awarded to him and the bills paid, as follows:

\$86.26 to Dr. L. C. Grant, for medical service rendered at the claimant's request prior to his operation.

\$124.26 to Centinela Hospital for hospital care furnished claimant at the time of his first operation.

This hearing was also set upon informal request by claimant for lump sum award. Formal petition on the prescribed form is filed by claimant, signed by him, and ordered filed at this time.

Mr. Weingand raises a question as to whether claimant should not be provided with further operation which might cure him and thereby reduce the amount of total compensation payable. This issue may be further developed by the parties. Claimant states that he desires to buy a grocery store and that it has been inspected by the State of California

Bureau of Rehabilitation. Will you get them to write me a letter on this?

FRED F. LAIRD

claimant, testified as follows:

Q. (By Mr. Pillsbury): Mr. Laird, you have been sworn before. First, has there been any change in your condition since the last order? A. No.

Q. Are you able to return to your former work?

A. No.

Q. Are you able to engage in regular labor in your mechanical work?

A. Not in manual labor. I can do bench work.

Q. What is your condition now?

A. Just lame, no strength in my back.

Q. Tell me about this grocery store.

A. It is at 1060 East Hyde Park Boulevard, Inglewood.

Q. How big is it?

A. 30 foot front, and about 30 feet deep.

Q. How many people are required to run it?

A. About three, my wife, my son and myself.

Q. How many are running it now?

A. Three—four part of the time.

Q. I mean before you buy it. How many does it take? A. Him and his wife and his son.

Q. You state there is a butcher shop now that you will sub-lease?

A. I will rent it back to the man that formerly owns it. He will be there to help.

Q. Lease it?

(Testimony of Fred F. Laird.)

A. Rent it back to him, not lease it.

Q. What is the purchase price offered you?

A. Around \$5,000.

Q. How is that made up?

A. Made up of—he is going to show me the bills of what he paid for the fixtures. He asks no profit, just what he paid for the fixtures. And the cost price on the stock, to invoice it out at the wholesale price. And he says the stock will run \$2,500, up or down.

Mr. Pillsbury: Mr. Blek, any questions?

Mr. Blek: No. I think it would be a good thing if we could get Mr. Laird to the point where he is self-supporting, that it would help him and the community, and I have made some investigation of this property, not just to advise him on it. I know the man who is selling it, and he is thoroughly reliable.

Mr. Pillsbury: Do you think Mr. Laird has had sufficient experience?

Mr. Blek: I do not say he personally, but his wife and son have worked for the past two years about six or seven blocks away from this market, so they are familiar with the neighborhood and with their assistance, and they are both willing to work, I think he could very easily make a success of this business.

Mr. Pillsbury: Mr. Bonnett, any questions?

Q. (By Mr. Bonnett): When was your last medical? A. About a month ago.

(Testimony of Fred F. Laird.)

Q. By whom?

A. Dr. Chaffin. Month and a half, something like that. His advice to me—I asked his honest opinion what should I do, and he said “Off the record, I would advise you not to touch it again.”

Q. Who is that? A. Lawrence B. Chaffin.

Mr. Pillsbury: Mr. Weingand.

Mr. Weingand: Let the record show that the defendant Liberty Mutual Insurance Company does not voluntarily acquiesce in the proceedings which have been initiated this afternoon on the application for a lump sum award.

Mr. Pillsbury: Then do you wish a continuance to present your memorandum?

Mr. Weingand: I do, and I wish to have the application for lump sum award formally served on my company and my assured, and I ask for the statutory time within which to prepare a defense.

Mr. Pillsbury: Granted. Anything further today?
Hearing continued to my next trip, October 4th.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on September 13, 1943.

/s/ HELEN SCHULKE,

Reporter.

Received Sept. 18, 1943. District No. 13.

Copy forwarded to Washington.

Filed Sept. 18, 1943.

United States Employees' Compensation
Commission, Before
Warren H. Pillsbury,
Deputy Commissioner
13th Compensation District
Case No. DB-P-1-715

FRED F. LAIRD,

Claimant,

vs.

CONTRACTORS, P.N.A.B.,

Employer.

LIBERTY MUTUAL INSURANCE COMPANY,
Insurance Carrier.

FRED F. LAIRD,

Claimant,

vs.

BUILDERS PEARL HARBOR DRYDOCK #4,
Employer.

U. S. FIDELITY & GUARANTY COMPANY,
Insurance Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING
October 18, 1943

Pursuant to notice, this matter was heard before
Warren H. Pillsbury, Deputy Commissioner, United
States Employees' Compensation Commission at

Room 657, United States Post Office Building, Los Angeles, California, on Monday, the 18th day of October, 1943, at 11:00 o'clock a.m.

Appearances

Claimant present in person and represented by
C. L. BLEK, attorney at law.

Defendants, Contractors P.N.A.B. and Liberty Mutual Insurance Company represented by
CLAUDE F. WEINGAND, attorney at law.

Defendants Builders Pearl Harbor Dry Dock #4 and U. S. Fidelity & Guaranty Company, represented by
MISS MARJORIE GLEASON,
Claims Adjuster.

Mr. Pillsbury: Continued hearing on application for lump sum award. At the hearing held September 13th the matter was adjourned for consideration of the question of a further operation, which would have a bearing on the amount of compensation for a lump sum which could be requested, also for further evidence on the general question of the application for lump sum.

Claimant is present and is represented by Mr. C. L. Blek, attorney at law. Defendants, Pacific Bridge Company and U. S. Fidelity & Guaranty Company, are represented by Miss Marjorie Gleason, Claims Adjuster. Defendants, Contractors, P.N.A.B. and Liberty Mutual Insurance Company, represented by Mr. Claude F. Weingand, attorney at law.

FRED F. LAIRD.

claimant, testified as follows:

Q. (By Mr. Pillsbury): Mr. Laird, has there been any change in your situation since the last hearing? A. No.

Q. Are you working now? A. Yes.

Q. What are you doing?

A. Light clerking around a grocery store.

Q. In the store you desire to purchase?

A. Yes.

Q. How much are you making?

A. \$25 a week, just enough to learn the business.

Mr. Pillsbury: Mr. Weingand offers a report of Dr. Lawrence Chaffin of September 30, 1943; received in evidence as Exhibit A.

Report of Dr. Carl W. Rand of October 4, 1943, received as Exhibit B.

Dr. Chaffin does not apparently comment on the question of further operation, and Dr. Rand states that no further operation is indicated. Does that dispose, Mr. Weingand, of the question of operation?

Mr. Weingand: It does, but the two reports bring up two additional questions, the probability of a moderate improvement with time and use. You notice that Dr. Chaffin says that eventually the man may have a very small amount—you can read what it says—or some slight permanent disability.

Mr. Pillsbury: You are not tendering an operation or insisting on it?

(Testimony of Fred F. Laird.)

Mr. Weingand: No, sir, not at this time.

Mr. Pillsbury: Are you requesting another operation, Mr. Laird?

Mr. Blek: No. You will recall Mr. Weingand and Mr. Bonnett thought if an operation was performed that Mr. Laird would be completely cured and that would have a bearing on the lump sum.

Mr. Pillsbury: I will disregard the contention unless the operation is requested by the defendants.

Q. Is there anything more you wish to state, Mr. Laird, with reference to the store you desire to purchase? Is the opportunity to purchase still open?

A. Yes, if soon. Two or three fellows are after it. Of course I am in there now. In compliance with the State Rehabilitation which you referred me to, he came out and inspected the property.

Mr. Pillsbury: Mr. Blek, anything?

Mr. Blek: Two weeks ago Mr. Laird and I were in here and I believe you suggested that he bring his wife and boy up today, and he has brought them today. They have been helping in the store. He has a 14-year old son who can do the heavy lifting.

Mr. Pillsbury: Miss Gleason, anything to present, or any questions?

Miss Gleason: No.

Mr. Weingand: What do you propose to do now, submit this matter to the New York office?

Mr. Pillsbury: First determine the situation in my own mind after receipt of the transcript and studying the medical reports. If I conclude to

(Testimony of Fred F. Laird.)

recommend a lump sum, I will submit the recommendation to the Employees' Compensation Commission in New York. They will have the final voice in the matter.

Mr. Weingand: As I read the provisions, the consent of the defendants is not important.

Mr. Pillsbury: It is not necessary.

Mr. Weingand: And allows a lump sum commutation over the protests of the defendants.

Mr. Pillsbury: Yes. Like any other issue in a compensation case, both sides are entitled to be heard but the consent of neither is necessary for decision.

Mr. Weingand: Nothing further.

Mr. Blek: If I may suggest, the matter of expediting this is important to Mr. Laird because he may not get this particular business. I was wondering if perhaps—you indicated \$5,000 the last time—if we agreed to take a smaller sum, not too much smaller, if the insurance companies would consent to it, if that would speed the matter.

Mr. Pillsbury: Applications for lump sum must be approved by the Commission, but consent might have a more favorable effect, counsel.

Q. How much is needed? A. \$5,000 cash.

Q. What is the purchase price?

A. About \$5,000.

Mr. Blek: It is a fluctuating price for the reason they will have to take an inventory. There is the

(Testimony of Fred F. Laird.)

price set of \$2,700 for the fixtures, and the inventory will be at cost.

The Witness: And the stock can be run up or run down.

Mr. Pillsbury: You would pay \$2,700 for the fixtures and good will?

Mr. Blek: And the stock would run close to \$2,500, but it is my thought that perhaps \$4,250 or \$4,500 would swing the transaction and the balance could be made on installment payments.

Mr. Laird: I could not carry too large a mortgage on the fixtures.

Mr. Blek: If we could agree to say \$4,500 or \$4,250 we would agree to that in the event it helped to speed the matter up.

Mr. Weingand: I think in a situation of this kind, particularly when there are two carriers and when subsequently these files will be subject to audit, and particularly with the later medical reports indicating substantial improvement and little, if any, ultimate permanent disability, that neither of the two carriers would be in a position to consent. Of course, if it is awarded, that is another matter. I do not know whether \$5,000 is due on a commuted basis.

Mr. Blek: Yes, we figured both cases paid around \$2,200.

Mr. Pillsbury: Did that include medical expense?

Mr. Blek: Yes.

Mr. Pillsbury: The medical expense would not

(Testimony of Fred F. Laird.)

be included in the amount of compensation. The liability is for \$7,500 for disability, with no maximum on the medical.

Mr. Blek: Maybe it was \$2,200 compensation in addition to the medical.

Mr. Weingand: We excluded medical.

Mr. Laird: Did you get the report from Mr. Smith of the State Rehabilitation? You asked me to have him examine the place and I did.

Mr. Pillsbury: There is in the file a report from the Department of Education, Bureau of Vocational Rehabilitation, dated September 27, 1943, from the Training Officer, with reference to the proposed purchase. It describes rather fully the nature of the store, but does not give any very positive recommendation either way. The report will be received in evidence as Exhibit C.

Mrs. Laird, will you come up here, please.

MRS. FRED H. LAIRD

testified as follows:

Q. (By Mr. Pillsbury): You are the wife of the claimant here? A. Yes.

Q. What do you think about this grocery store proposition? Do you think your husband and son and yourself can make a success of it?

A. I think we can make a good go of it. My son and I would have to do the heavy work as far as lifting or any heavy work, because Fred is not able to do that.

(Testimony of Mrs. Fred H. Laird.)

Q. Who would do the head work?

A. My son.

Q. I was asking about the head work.

A. My husband.

Q. Have you had any experience in grocery stores?

A. Yes, I have.

Q. How much experience have you had?

A. I have worked there for three years.

Q. What kind of store?

A. Market and grocery store.

Q. And have you had anything to do with the financial end?

A. No, not exactly. I have to collect the points and check out the groceries. I have signed for loads as they have come in and checked them, and outside of that, that is all.

Q. You have not had much chance to study the question of how to make a profit?

A. I have in the vegetable line. I know you have to watch to make money.

Q. How old is the boy? A. 14.

Q. And he is quite active? He looks active.

Q. (By Mr. Weingand): What do you plan to do when the youngster is in school?

A. Well, he could work after school and on Saturdays, and you do not have a load come in every day.

Mr. Weingand: That is all.

Mr. Pillsbury: Does anyone else have any questions? I think that is all. Thank you.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on October 18, 1943.

/s/ HELEN SCHULKE,
Reporter.

EXHIBIT A

Lawrence Chaffin, M.D.
609 Medical Office Building
1136 West Sixth Street
Los Angeles

September 30, 1943.

U S Fidelity & Guaranty Co
111 W 7th St
Los Angeles, California

Dear Sirs:

Re: Your File # 55-C-14693 Pacific Bridge Co
Fred F Laird Date of injury: Dec 2 '41 & Jan
13 '42.

As you requested I re-examined the above named patient at my office September 27 1943 and here-with follows my report. Patient was last examined by me July 13 1943. He was first seen at this office August 25 1942, report of this examination is already contained in your files

Weight 151#. Temperature 99.2 pulse 88 respira-tions 20. Blood pressure 110/64.

Exhibit A—(Continued)

Patient has continued to be actively up and about since his release from the Santa Fe Hospital March 18 1943. August 30 1943 he began work in a grocery store being assisted by his wife and son and he intends to learn this trade. He plans to buy the grocery business if present plans materialize. He believes he can do this work in a grocery store satisfactorily "as long as I am my own boss" Patient states when he gets fatigued he can rest and he is not required to do heavy lifting. He acts in the capacity of manager. He does not wish further surgery at this time.

Present complaints may be summarized as follows: Spine: Weakness thru mid lower back, with pain on bending forward, prolonged standing or heavy lifting. Pain does not extend into either hip, or down either leg. Head: After standing of more than an hour or so he complains of some headache which is pounding in character, and at time radiating upward into the right side of the head to the right forehead.

Sleep is disturbed. Patient is awakened two to three times during the night but on change of position he goes back to sleep. There is no apparent cause for his being awakened. Occasionally when lying on the back sleeping he will awaken, and the lower back and posterior legs feel numb. This numbness disappears on change of position. He believes on the whole he gets his usual amount of sleep.

Patient states that since he began work in the

Exhibit A—(Continued)

grocery store on August 30 1943 “my nerves have been better. His appetite is good. He believes the condition of his back has not changed since he was last examined in this office on 7-15-43.

Examination—Examination was made with all clothing removed. Patient is a young man who appears to be in good general health. He moves about the examining room without evidence of pain or discomfort.

Skin—Clear

M M—Good color

Eyes including Pupils—Normal

Ears, Nose—Negative. Hearing is normal

Teeth—In fair condition

Throat—Generally red, probably from smoking.

Tonsils in and small

Neck—The supraclavicular and posterior cervical lymph nodes are all palpable but not definitely enlarged and not tender. The axillary lymph glands are not definitely enlarged.

Chest—Symmetrical with equal expansion

Heart, lungs—Negative.

Abdomen—Negative. The left inguinal lymph glands are large, firm and moderately tender. There are no areas of infection in the left leg to explain this enlargement.

Genitals—Negative

Rectal—Negative. The prostate is not enlarged.

Arms—Normal

Exhibit A—(Continued)

Legs—Joint motions normal.

Length of legs, $34\frac{1}{4}/34\frac{1}{2}$ thighs 18/18 calves
 $12\frac{1}{2}/12\frac{1}{2}$.

Skin sensation normal.

Reflexes—All are normal. Both knee jerks equal & active; ankle jerks equal & active

No clonus, no Babinski

Spine—Well healed $5\frac{1}{2}$ inch transverse semilunar operative scar over the lumbo-sacral junction. The weakness of which patient complains is said to be generalized in the lower lumbo-sacral region. No abnormal bony points are felt. There is generalized moderate tenderness region of the operative scar. The lumbar muscles are well relaxed. There is some flattening of the lumbar spine

Motions—In forward bending the finger tips fail to touch the floor by 14 inches with subjective complaint of pulling weakness at the lumbo-sacral junction Backward bending 25% limited

Right & left lateral bendings 25% limited; rotation right and left about 25% limited

Extremes of all motion are said to cause weak sensation in the lower back.

X-Ray—8-24-42 Dr. Karshner made the following report: Roentgen examination including antero-posterior stereo and lateral projections of the lower dorsal, lumbar and lumbo-sacral spine reveals no evidence of fracture, dislocation or

Exhibit A—(Continued)

other injury to any bone or joint. There is no gross anomaly. There is evidence of hypertrophic arthritis manifested by slight sharpening of vertebral margins. There is increased density over the articulations between the fifth lumbar vertebra and the sacrum indicating a hypertrophic arthritic process. There is hypertrophic bony deposit about the margins of the upper portion of the right sacroiliac joint. The arthritis is of origin prior to the alleged injuries of 12-2-41 and 1-13-42

The space between the 4th & 5th lumbar vertebrae is clear. I cannot demonstrate defect in either lamina of either the 4th or 5th lumbar vertebra. In lateral projection I get the impression that the tip of the spinous process of the 5th lumbar vertebra may have been whittled off a bit; in antero-posterior projection there is a rectangular bony shadow approximately one centimeter in its greater diameter between the spinous process of the 5th lumbar vertebra and the spinous process of the first sacral segment. I cannot say that it is connected by bony union to either vertebra.”

January 29 1943 the following report was made by Dr. Karshner: Roentgen examination of the lower dorsal, lumbar and lumbo-sacral spine shows no material change from the films of 8-24-42. I cannot demonstrate fusion of any of the lumbar vertebrae or of the fifth lumbar vertebra to the sacrum.”

Exhibit A—(Continued)

Discussion—As a result of this and previous examinations, and my observation of this patient since February 15 1943, I believe he is now well able to do the light type of work at which he is now employed in a grocery store. This I believe will be his most beneficial type of treatment. I believe with further time and use there may be increase in strength of the low back. I believe he cannot do the work of a carpenter at this time, and cannot state when this type of work may be done. There will probably be a small amount of permanent weakness in the lower back, with a small amount of restricted low back motions.

I believe there is no further treatment indicated beyond time and use.

Very truly yours,

/s/ LAWRENCE CHAFFIN, M.D.

LC-J

[Stamped]: Received, Oct., 1943, Claim Dept.,
Los Angeles Office.

EXHIBIT B

Carl W. Rand, M.D.
1023-4 Pacific Mutual Bldg.
Los Angeles

October 4, 1943.

Dr. Lawrence Chaffin
1136 West Sixth Street
Los Angeles, California

My dear Doctor Chaffin:

Re: Mr. Fred Laird, Emp: Pacific Bridge Building
Ins: United States Fidelity & Guaranty

Pursuant to your request the above named injured was re-examined at my office this date, having last been seen on February 24, 1943.

His general condition is better than was the case at that time. He states that he no longer has pain in the right sciatic distribution. If he does not get over-tired his back is comfortable, otherwise he has low back pain. He has to be careful about heavy lifting. He has been working in a grocery store for the past five weeks.

His general physical condition is good. His wound is well healed. He leans forward until the finger tips come within 4" of the floor. Backward and sideward bending are moderately limited. There is only moderate spasm of the lumbar muscles. His gait is normal. Straight leg lifting can be carried out on each side to 90°. Lasegue's sign is negative right and left. Circumference of each

Exhibit B—(Continued)

calf is 32.5 cm. No objective sensory disturbances are made out. The knee jerks are present on reinforcement only; they seem equal. Neither tendon Achilles jerk is present. There are no abnormal reflexes of the Babinski group. No ankle clonus right or left.

In my opinion his condition is considerably better than was the case on February 24, 1943, and no further operations are indicated.

Thanking you, I am

Very sincerely yours,

/s/ CARL W. RAND.

CWR/A

[Stamped]: Received, Oct., 1943, Claim Dept.,
Los Angeles Office.

EXHIBIT C

State of California
Department of Education
Bureau of Vocational Rehabilitation
Los Angeles 13, California
September 27, 1943.

Mr. Warren H. Pillsbury
Deputy Commissioner
United States Employees'
Compensation Commission
Room 318-417 Market Street
San Francisco 5, California

Re: Fred Laird, DB-P.

Dear Mr. Pillsbury:

Mr. Laird informed us that you had recently suggested that he ask us to investigate the food market which he wants to purchase if his insurance is commuted, and to report our findings to you.

We have seen the business and looked over the books and have acquired considerable factual data. Since you are probably primarily interested in the feasibility of commuting Mr. Laird's benefits for the purchase of this business we will orient our remarks in this direction.

The food market consists of grocery, wine and beer, vegetable, and meat departments located at 1060 East Hyde Park Boulevard, Inglewood, California. It is owned by Frank Fleishacker and does business under the name, "Fairview Market."

Exhibit C—(Continued)

Mr. Fleishacker opened this market about 1924 and operated it until about 1940 when he sold it. The purchaser failed in May 1943 due to poor management, according to Mr. Fleishacker. The latter remodeled and reopened it on July 2, 1943.

Since the present owner has been operating it continuously for so short a time, and since current purchasing and selling conditions are a typical, it is difficult to draw any reliable comparisons and conclusions from the books. However, herewith are some items from the books which may be used for what they are worth. (Items followed by an asterisk indicate that information is based upon a document of original entry such as a duplicate sales tax return, wholesaler's statement, etc.). Incidentally, these books are not regular double-entry books and are not too well organized.

Gross Sales

	1943	
	July	August
Groceries		
Wine and beer	\$3358.16	\$3350.22*
Vegetables		
Meats	\$1346.—	1593.—

Purchases

Meats	\$ 969.03	\$ 997.90
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Groceries are purchased from several sources, but mainly from Haas-Baruch Co. Statements from the latter show:

Exhibit C—(Continued)

7/15—31/43	\$303.16*
8/ 1—15/43	373.88*
8/15—31/43	355.23*
9/ 1—15/43	600.36*

Meats likewise are purchased from several sources but mainly from Armour Co. Saw statement for week ending 6/26/43 in the amount of \$218.—*

If the market has an overall gross sales per month of \$4500 to \$5000, and if the net profit can be figured at 5% (the figure generally considered correct for this type store), the business is earning \$225.00 to \$250.00 per month. Employed now are Mr. Fleishacker, Mr. Laird, Mrs. Laird, and the Laird boy, age 14, who works part-time. The store is open about 12 hours per day.

Mr. Fleishacker wants \$2600 for his fixtures, which are not old fashioned and include a small walk-in meat refrigerator and a self-service grocery refrigerator, both operated from a single compressor. There is also a large modern double meat and delicatessen refrigerated showcase operated from an independent compressor. Also included in the fixtures are: a meat grinder, 2 scales, an adding cash register, shelving and display islands, etc. It is difficult to evaluate these because of current conditions, but the overall price asked probably includes some goodwill.

The merchandise is to be transferred on an inventory based on current wholesale value. Mr. Fleishacker thinks it will come to about \$2500 but

Exhibit C—(Continued)

thinks also that it may be as low as \$1700. He is willing to loan Mr. Laird \$500 on the fixtures, if necessary.

The rent asked is \$60.00 per month. A lease for any length of time can be had. Payment in advance of the last month's rent is not required. The building belongs to Mr. Fleishacker. He is willing to pay Mr. Laird \$30 per month for the meat department and to operate it until Mr. Laird can hire a butcher or learn to do it himself.

It is claimed that the business is on a strictly cash and carry basis with all merchandise delivered to the store by the wholesalers. Mr. Laird has met the various salesmen and is convinced that they will continue to provide him with scarce merchandise on the same basis as at present.

Some of the pitfalls of business were discussed with Mr. Laird. It was pointed out that he lacks experience or training in business—particularly in meat cutting and the other types carried on in this market. The difficulty of securing a qualified employee for the meat department was pointed out. His inability to lift or stay on his feet much was also discussed. Mentioned also was the relatively small percentage of profit in view of the investment, of money and labor required. However, Mr. Laird has apparently thought of all of these factors and thinks he can cope with them, with the aid of his family, as they arise. There is the pos-

Exhibit A—(Continued)

sibility that his determination might enable him to make a vocational adjustment through this business.

Very truly yours,

/s/ ARTHUR RASHKOW,
Training Officer.

AR/dg

EXHIBIT A

Lawrence Chaffin, M.D.
1138 West Sixth Street
Los Angeles

September 30, 1943.

U. S. Fidelity & Guaranty Co.
111 W. 7th St.
Los Angeles, California

Dear Sirs:

Re: Your file # 55-C-14693 Pacific Bridge Co.
Fred F. Laird. Date of injury: Dec 2 '41 &
Jan 13 '42

Discussion—

As a result of this and previous examinations, and my observation of the patient since February 15, 1943, I believe he is now well able to do the light type of work at which he is now employed in a grocery store. This I believe will be his most

beneficial type of treatment. I believe with further time and use there may be increase in strength of the low back. I believe he cannot do the work of a carpenter at this time, and cannot state when this type of work may be done. There will probably be a small amount of permanent weakness in the lower back, with a small amount of restricted low back motions.

I believe there is no further treatment indicated beyond time and use.

Very truly yours,

LAWRENCE CHAFFIN, M.D.

EXHIBIT B

Carl W. Rand, M.D.

1023 Pacific Mutual Bldg.

Los Angeles

October 4, 1943.

Dr. Lawrence Chaffin
1136 West Sixth Street
Los Angeles, California

My dear Doctor Chaffin:

Re: Mr. Fred Laird. Emp: Pacific Bridge Building Ins.; United States Fidelity & Guaranty.

Pursuant to your request the above named injured was re-examined at my office this date, having last been seen on February 24, 1943.

His general condition is better than was the case at that time. He states that he no longer has pain

Exhibit B—(Continued)

in the right sciatic distribution. If he does not get over-tired his back is comfortable, otherwise he has low back pain. He has to be careful about heavy lifting. He has been working in a grocery store for the past five weeks.

His general physical condition is good. His wound is well healed. He leans forward until the finger tips come within 4" of the floor. Backward and sideward bending are moderately limited. There is only moderate spasm of the lumbar muscles. His gait is normal. Straight leg lifting can be carried out on each side to 90°. Lasegue's sign is negative right and left. Circumference of each calf is 32.5 cm. No objective sensory disturbances are made out. The knee jerks are present on reinforcement only; they seem equal. Neither tendon Achilles jerk is present. There are no abnormal reflexes of the Babinski group. No ankle clonus right or left.

In my opinion his considerably better than was the case on February 24, 1943 and no further operations are indicated.

Thanking you, I am

Very sincerely yours,
CARL W. RAND.

Received Oct. 22, 1943, District No. 13.

Filed Sept. 18, 1943.

Copy forwarded to Washington.

Federal Security Agency, Bureau of Employees
Compensation, Before Warren H. Pillsbury,
Deputy Commissioner, 13th Compensation Dis-
trict.

Case No. DB-P-1-1715

FRED E. LAIRD,

Claimant,

vs.

CONTRACTORS, PACIFIC NAVAL AIR
BASES, and BUILDERS PEARL HARBOR
DRY DOCK No. 4,

Employers,

LIBERTY MUTUAL INSURANCE COMPANY
and U. S. FIDELITY & GUARANTY COM-
PANY,

Insurance Carriers.

TRANSCRIPT OF TESTIMONY AT
HEARING

Pursuant to notice, this matter was heard before
Warren H. Pillsbury, Deputy Commissioner, Fed-
eral Security Agency, Bureau of Employees Com-
pensation, in the Grand Jury Room, United States
Post Office Building, Los Angeles, California, on
Monday, the 19th day of August, 1946, at 2:00
o'clock p.m.

Appearances

Claimant present in person, and represented by

John W. Fleming, of the law office of Charles L. Blek, Attorney at Law.

Defendants, Contractors, P.N.A.B., and Liberty Mutual Insurance Company, represented by Claude F. Weingand, Attorney at Law.

Defendants, Builders Pearl Harbor Dry Dock No. 4, and United States Fidelity & Guaranty Company, represented by Virgil L. Brown, Attorney at Law.

Mr. Pillsbury: Claimant present in person, and represented by Mr. John W. Fleming, appearing for Mr. Charles L. Blek, attorney for claimant. Defendants, Contractors, Pacific Naval Air Bases and Liberty Mutual Insurance Company represented by Mr. Claude F. Weingand, Attorney at Law. Defendants, Builders Pearl Harbor Dry Dock No. 4 and U. S. Fidelity and Guaranty Company, represented by Mr. V. L. Brown, Attorney at Law.

In this matter joint compensation orders were entered on November 4, 1942, in favor of claimant, one of them awarding one-half compensation against Contractors, Pacific Naval Air Bases and Liberty Mutual Insurance Company, and the other awarding one-half compensation against Builders Pearl Harbor Dry Dock No. 4, and United States Fidelity & Guaranty Company. Each award was for \$12.50 a week, or a total of \$25.00 a week from both carriers. The reason for this apportionment appears in the orders.

No proceedings have since been had to modify

said orders other than some matters not now involved, consisting in adjustment of reimbursement for medical expense.

The matter comes on for hearing today upon the petition of Mr. Weingand for the purpose of determining extent of temporary partial disability and the payments due therefore, based upon the assertion that claimant has been earning substantial sums of money as a builder and interior decorator and building contractor. The implication is that disability has become partial instead of total.

Mr. Weingand, do you desire to make a statement?

Mr. Brown: I would like to join in that.

Mr. Pillsbury: Did you wish to make a statement?

Mr. Weingand: Yes. At this time, I wish on behalf of defendant carrier, Liberty Mutual Insurance Company, to raise as an additional issue, or perhaps I should put it this way: to orally petition to terminate disability, supporting my oral petition so to do by a report of examination by Dr. Christopher Mason, M.D., dated August 1, 1946.

I can appreciate that this additional oral petition may come in the nature of a surprise to applicant and to his attorney, and if any point is raised in that regard, I certainly would not insist on proceeding at this time, knowing that the applicant and his counsel should have and are entitled to the statutory ten days' notice.

Mr. Pillsbury: I will give them that time.

Mr. Fleming: I would request additional time for examination by our physician or an impartial physician, and an opportunity to examine the report.

Mr. Weingand: I have a copy for you, counsel.

Mr. Pillsbury: It may be well to open a record on such matters as can be started today, and then adjourn to a future date.

Mr. Fleming: Since the report is apparently adverse to claimant's position, I do not believe there is any need to go into it now, but we ask additional time.

Mr. Pillsbury: How about the allegation that claimant has been making a substantial income by his labor for some time past?

Mr. Fleming: That is an issue to be determined at this hearing.

Mr. Pillsbury: The other issue is as to whether his physical impairment has terminated.

Mr. Fleming: Yes. I think the issue whether he is able to earn a substantial amount as a contractor is to be determined at this time, and the other issue would be based upon the medical.

Mr. Pillsbury: Mr. Laird—

Mr. Fleming: We would like to request attorney's fees for our appearance today on behalf of the applicant.

Mr. Pillsbury: Very well. That will be acted on when the decision is entered.

FRED E. LAIRD

claimant, having been previously sworn, testified as follows:

By Mr. Pillsbury:

Q. Mr. Laird, are you fully recovered and able to earn the same wages you were before your accident? A. No, sir.

Q. Has there been any change in your physical condition since the last decision in your case?

A. It is some better, due to the limited amount of things I do. I watch myself and do not do things I know will hurt me.

Q. Have you been able to earn a fair living in the last year or two?

A. Not actually. I have a couple of workers working for me. I did manage to go out and take a few paint jobs. I figured the jobs.

Q. Can you estimate your earnings from your wages in the last six months?

A. In the last six months I have had scarcely any income.

Q. Why not?

A. I have been tinkering with a building. My boy and I have been playing with it. I have recently sold it; it is still in escrow.

Q. You worked on your own building there, did you? A. That is right.

Q. Before that what income did you have?

A. The Four Square Gospel as a supervisor, building this church.

(Testimony of Fred E. Laird.)

Q. How much did you make a week on that work?

A. The deal was I would hire the men. I financed it. And they allowed me \$1.50 an hour for each man. If I paid the men \$1.25 an hour, I made the difference, plus \$1.50 to me.

Q. How much a week did you earn on that job?

A. Doing that job I would—there were no records kept. I would say \$75.00.

Q. \$75.00 a week? A. Yes.

Q. What did you do before that?

A. I was just tinkering around, taking a paint job and having men to do the painting.

Q. What was your average weekly income from that activity?

A. It would vary—that was nearly two years ago.

Q. How much do you think you netted a week before the Four Square Gospel job?

A. I don't suppose \$20.00 a week—only now and then.

Q. How much do you think you are reasonably able to earn right now?

A. I have just acquired a fruit and vegetable and frozen food market. My family and I run it and it is running 60 to 70 a day, on Saturday one hundred.

Q. How much do you attribute to your labor?

A. Very little of it. The man delivers the vegetables, handles the bulkage, handles the lifting, and

(Testimony of Fred E. Laird.)

my wife and my little boy and my older son do most of it. Ten per cent is possibly mine.

Q. You think then you are earning about \$6.00 a day yourself?

A. Hardly that, I don't believe.

Mr. Pillsbury: Report just submitted of Dr. Christopher Mason dated August 1, 1946, received in evidence as Exhibit A.

Does either side desire to ask any further questions?

Mr. Weingand: Yes. Does your file show that the original award is dated November 5, 1942?

Mr. Pillsbury: November 4, 1942.

Q. (By Mr. Weingand): Mr. Laird, Mr. Pillsbury has just told us that the award he made in your favor is dated November 5, 1942—

Mr. Pillsbury: November 4.

Q. (By Mr. Weingand): That is right, November 4, 1942. Under the terms of that award you were entitled to and have been receiving from the two different insurance companies \$25.00 a week. At the time of the last hearing, just before the award came out, you testified that you had done no work following the surgery which Dr. Taylor had performed on your back. A. Yes.

Q. This may be somewhat tedious to you, but I am interested in knowing what you have earned since the date of that award, November 4, 1942. I will ask this first question: Who did you first work for after that date?

(Testimony of Fred E. Laird.)

A. I really do not know.

Mr. Pillsbury: Just a minute. I think I should shorten your examination, Mr. Weingand, in this way: I have just had some correspondence from the Chief Counsel of the Bureau implying that a change in compensation rate should not be retroactive, particularly for a long period of time. Your petition for modification is dated July 17, 1946. I think the question is, therefore, what earning capacity does he have and did he have since about July 17, 1946. In view of the indefiniteness of recent employments it is possible to go back to some extent over his experience in order to ascertain his present capacity, but I think it is not necessary to establish actual earnings for periods several years ago.

Mr. Weingand: Well, Mr. Pillsbury, let us assume, taking a hypothetical case—let us assume this man since the date of this decision had been earning at various employments sums in excess of his wages at the time of injury. You do not mean to say the Chief Counsel would bar me from showing that and seeking a credit for the overpayment?

Mr. Pillsbury: I think he would hold it is incumbent upon the insurance company to bring up a question of change promptly and not attempt to secure a retroactive credit.

Mr. Weingand: How could the applicant be harmed by the date upon which the investigation is initiated? It is the fact of earnings which is material.

(Testimony of Fred E. Laird.)

Mr. Pillsbury: The proposition came up over the question of whether in changing the compensation rate now I should give credit for an overpayment for several years in the past, assuming such overpayment to have resulted, if the order changing the rate were made retroactive.

Mr. Weingand: Certainly that could not harm the applicant.

Mr. Pillsbury: If he is entitled to more compensation at a lower rate, and by reason of overpayment of several thousand dollars, compensation could not be required to be paid to him for a year or two, he would be harmed.

Mr. Weingand: Compensation is reimbursement for impaired earnings.

Mr. Pillsbury: But to have a gap for a year or two in the future while overpayment is caught up would harm him.

Mr. Weingand: I bow to the opinion of your Chief Counsel.

Mr. Pillsbury: You can try it out in the courts.

Mr. Weingand: Yes. The reports in my file reveal this man had substantial earnings. He worked as a chauffeur for Norma Shearer; he worked in a machine shop for four months; he was in the painting and contracting business.

Mr. Pillsbury: I will still take the position that inquiry is not possible except in so far as it may throw reasonable light on his earning capacity at the present time and since the date of your application.

(Testimony of Fred E. Laird.)

Mr. Weingand: I am at a loss to understand the position you take. Obviously the information which has been accumulated and which supports the petition must have covered a period prior to the date upon which the petition for the adjustment of compensation was made.

Mr. Pillsbury: Try to make your inquiry more brief, as to earlier and more remote years.

Mr. Weingand: I cannot conceive there is any difference in which year the earnings were, whether three years ago or within the last two weeks. Is this an arbitrary line?

Mr. Pillsbury: Proceeding with the proposition that your application for modification should take effect as of the date you made application.

Mr. Weingand: It is the earnings he has had that will support my request for a modification. If we have overpaid I consider we are entitled to a credit on payments we may have made.

Mr. Pillsbury: Further discussion outside the record.

(Discussion off the record.)

Mr. Pillsbury: Mr. Weingand, I will at this time invite you to make an offer of proof, indicating what you desire to establish by the line of questioning you were starting on.

Mr. Weingand: I might state, before I make the offer of proof requested, that much of my questioning of the applicant is of necessity in the nature of

(Testimony of Fred E. Laird.)

cross-examination. I have had served on the applicant a subpoena duces tecum to produce his records of income earned and I have not as yet had an opportunity to ask whether he has responded to that subpoena duces tecum. If he has and has the records, Mr. Brown and myself would like a reasonable opportunity, by a short continuance, to examine those records. The information which I have may in some instances be hearsay. It can promptly be supported or denied, shown to be false by testimony given by this applicant under oath.

Mr. Pillsbury: Tell me what you expect to prove.

Mr. Weingand: I expect to show from the date of the award in this case, November 4, 1942, that this claimant has had a substantial income for long periods of time, and that because of the income which he has since that date received the defendant insurance carriers are by law entitled to a credit for any overpayment of temporary partial indemnity made during that period of time.

It is the position of the defendant carriers that they and each of them are as a matter of law entitled to inquire into the claimant's actual earnings from all sources from the date upon which the decision was rendered, November 4, 1942, and I believe the decision itself calls for payment—I think I have that decision right here—before I make any comment with reference to the decision itself, I might—that would be argument, which I will reserve for the conclusion of the proceeding.

(Testimony of Fred E. Laird.)

It is the position of the defendants there is no law or decision which limits the period of time during which the defendants are entitled to inquire into earnings subsequent to the date of injury.

It is the defendants' position that they are entitled to any credit for overpayment if it is established that the claimant has had substantial earnings, by the same token that the applicant would be entitled to a further payment if compensation was erroneously figured in the matter. And that is my offer of proof on behalf of the two defendant carriers.

Mr. Pillsbury: Have you had a subpoena served on you and have you produced here your records to show what you have earned?

Mr. Fleming: Yes. The subpoena was served and the records are here.

Mr. Pillsbury: A summary of the income as shown by these records may be filed with me subsequently, to supplement the offer of proof, subject to the possibility that I might change my position on re-reading the conclusions of the Chief Counsel referred to, in case I have incorrectly recalled them.

At this time I will provisionally deny the request for opportunity to prove past earnings at a period remote to the issue of present earning capacity, and I will also take the position that defendants are not entitled at this time to seek a credit for any past overpayments which might otherwise be established for several years.

(Testimony of Fred E. Laird.)

The question remains open as to Mr. Laird's present earning capacity. Capacity differs from actual earnings, but actual earnings in a period not remote to the present time may be shown as having a bearing upon earning capacity at the present time.

(Discussion off the record.)

Mr. Fleming: I would like the record to show that we will object to the introduction of any evidence, or any questions based upon the documents produced here as a result of the subpoena duces tecum, on the ground that any evidence prior to or close to or earlier than the petition for modification is irrelevant to the issues of this hearing—more or less corroborating your position, Mr. Commissioner, for whatever it is worth.

Mr. Pillsbury: Objection sustained.

(A short recess was taken.)

Mr. Pillsbury: After discussion, it appears that subject to the legal defenses and positions, the parties have agreed upon the following factual matter which I will now read into the record as evidence, for whatever it may be worth. This supersedes my position declining to receive such matters other than in an offer of proof. It does not supersede my statement of my understanding of the rules of law which are applicable, but is intended to simplify the record.

It is stipulated that for the year 1942 claimant

(Testimony of Fred E. Laird.)

did not file any income tax statement showing his earnings.

For the year 1943 he filed an income tax statement showing his earnings were \$596.50 in that year.

For the year 1944 he filed an income tax return showing that he earned \$1,363.31 for the year.

For the year 1945 he filed an income tax return showing that he earned in that year \$1,246.00.

For the year 1946 no return has been filed.

It is agreed he engaged in a certain real estate transaction, in which he assisted in the building of several units of residential property on land owned by him, which he has now sold. The sale price for the entire property was \$22,500. The original cost to him for the land and improvements when he bought them was \$3,500. During the time he owned the land he helped to construct three unit flats and garages. Any other buildings?

The Claimant: No.

Mr. Pillsbury: Mr. Weingand, you may proceed.

Q. (By Mr. Weingand): Mr. Laird, have you been sworn, or does his oath carry over from 1942?

Mr. Pillsbury: It will carry over from the earlier year.

Q. (By Mr. Weingand): You are under oath now, Mr. Laird, if you please. I am referring to your earnings for the years 1943, 1944 and 1945. Except as they have been placed in the record by Commissioner Pillsbury, did you have any earnings from any other source during those three years?

(Testimony of Fred E. Laird.)

A. No.

Q. Did you receive any money for work performed from any person, firm or corporation during those three years? A. No.

Q. Now, getting to 1946, Mr. Laird, about how many hours time did you personally devote to the erection or construction of these three apartments with garages attached on your property?

A. You mean manual labor?

Q. Manual labor first. A. Not very much.

Q. How much?

A. I couldn't tell. I don't have the least idea. I would work two or three hours at a time and I would sit down and rest.

Mr. Pillsbury: Did other people work on the house with you?

A. Yes.

Q. How many?

A. My oldest son with the framework, and Mr. Bud Kennedy to help with the roof with my son, and the rest was sub-contracted, electric, plaster, and so on.

Q. (By Mr. Weingand): How many hours did you devote to, let us say the foundation?

Mr. Pillsbury: Mr. Weingand, first, I am not a good prophet, but I am not able to see how you can extract from this situation any information to show how much his time was worth. The difference between the buying and selling price, and increase in real estate values, and the question of profit on con-

(Testimony of Fred E. Laird.)

tracts, and the value of the labor of others, attach to any figure for his own wages.

Mr. Weingand: I am forgetting about the sale. I am assuming in my own mind that Mr. Laird worked.

Mr. Pillsbury: Could you work eight hours a day?

A. No.

Q. (By Mr. Weingand): About how many hours did you put in on the foundation?

A. I hired it done.

Q. How about the cement or concrete floors?

A. No.

Q. Is the building constructed of wood?

A. It is frame, yes.

Q. How many hours did you devote to the erection of the frame work?

A. Well, that I don't know, I have no records. Just two or three hours at a time, then I would take it easy.

Q. How many times did you work two or three hours? Would you say one hundred hours in all?

A. I have been a year on it.

Q. Would you say one hundred hours?

A. I really don't know. It is very difficult to answer that.

Q. They were constructing the building, I take it, six days a week?

A. Oh, no. We worked a few days and then be gone a while.

(Testimony of Fred E. Laird.)

Q. When did you start construction?

A. About last September.

Mr. Pillsbury: Mr. Weingand, I think your principal difficulty now is in trying to establish earning capacity by cross-examination of claimant instead of bringing witnesses to express opinions as to how much a 25 per cent disabled man would be able to earn as a contractor in the open market. I get my 25 per cent from Exhibit A, Dr. Mason's report, in which he expresses the opinion the patient is not more than 25 per cent disabled.

Mr. Weingand: One certain way to establish the earning capacity is to find out how much the man actually earned and doing what, and the man is able to testify as to what the reasonable value of the services of a person erecting frame work or roof or decorating is per hour or per week.

Mr. Pillsbury: Are you satisfied to rely on his estimate?

Mr. Weingand: I think he will be fair. He is under oath.

A. I don't know. It is just a hit and miss affair.

Q. (By Mr. Weingand): You must have some opinion. I know you kept no record, but what is your best estimate? Understand it will be considered only as an estimate.

Mr. Pillsbury: Of the number of hours he worked on the house?

Mr. Weingand: Yes.

A. Well, let's see. My estimate of the number

(Testimony of Fred E. Laird.)

of hours I put in during this last year on that house would be a hit and miss estimate, and I would not say I have put in over 100 hours myself.

Mr. Pillsbury: Over a six months period?

A. Almost a year. I think that would be putting it strong.

Q. (By Mr. Weingand): Why didn't you put in more? A. Because I couldn't.

Mr. Pillsbury: Why not?

A. I would only work a few hours, an hour or two hours, and then I would have to sit down.

Q. Why?

A. My back gives out on me, weak.

Q. (By Mr. Weingand): That was from September of last year until the present time?

A. About a month less than a year.

Q. Is your back worse than it was in September of last year? A. No.

Q. Better? A. No.

Q. About the same? A. Same.

Q. You worked for Mrs. Bigelow and repaired her house in 1945?

A. I didn't do the work myself. Mr. Kennedy did the manual work. I instructed him.

Q. Mr. Kennedy did the heavy work?

A. Yes, and my son on the apartment.

Q. Did you do any painting?

A. My son did.

Q. Any cabinet work?

(Testimony of Fred E. Laird.)

A. I tinkered around with that. That was my biggest part of the job.

Mr. Pillsbury: Are you able to do the work of a contractor, figuring, estimating and ordering?

A. Some; up to a certain extent. Not into large construction?

Q. But for residential work?

A. Some of them, yes.

Q. (By Mr. Weingand): When did you buy this little vegetable stand?

A. The first day of August.

Q. This year? A. Yes.

Mr. Pillsbury: What are you doing there now?

A. I am just helping my wife and family, manage the business, taking care of the buying.

Q. (By Mr. Weingand): I believe you told Mr. Pillsbury that you figured that you were actually earning about \$8.00 a day?

A. No. He asked if I were and I said I did not think so. I have no figures on the market. It is going around \$50 or \$60 a day, but I have just audited it and I haven't averaged it up yet.

Q. Who is actually there?

A. My wife, one small son, my large son is there every morning, and myself. I am in and out.

Q. Your small son?

A. Billy Eugene Laird.

Q. How old is he?

A. Eleven, will be 12 the 30th of September.

Q. The other is your stepson?

(Testimony of Fred E. Laird.)

A. Stepson.

Q. How old is he?

A. Born 1929. He will be 17.

Q. Is he in school?

A. He is married and still going to school. He helps me with everything, and lives with us.

Q. So when the son and stepson are in school you and your wife run the place?

A. We intend to do so.

Q. That is fresh vegetables?

A. Fresh vegetables, fresh fruit, and frozen food.

Q. Where is it located?

A. 10802 Hawthorne Avenue.

Q. What are your present complaints with reference to your injured back?

A. I just have spells every once in a while and I have to stay in bed for four or five days until I get over it.

Q. Why can't you get up?

A. Dr. Taylor told me the sciatic nerve becomes pinched or swollen, and if I bump myself——

Q. If an operation were offered to you by the defendant insurance companies for the cure and relief of your present complaints, would you accept it?

A. Yes, if they can show me where they can do any better.

Q. Would you accept it if they could not assure you?

A. That I have gone through with Dr. Chaffin.

(Testimony of Fred E. Laird.)

Q. Would you accept, yes or no?

A. No.

Q. That is, you would not take the operation unless they guaranteed the outcome?

A. No; they give me a reasonable assurance.

Mr. Pillsbury: A man is not obligated to take an operation unless there is ground to believe he will be substantially improved by it.

Mr. Weingand: I was noticing the report of Dr. Mason, in the last paragraph—the next to the last paragraph, “The question of possible further therapy was discussed with the patient and he stated that he doesn’t want anything whatsoever done.”

Mr. Pillsbury: Does your medical advice lead you to believe a fusion operation will help him, and are you offering it?

Mr. Weingand: I am not offering it, but I am interested in knowing what the applicant’s attitude would be if offered.

Mr. Pillsbury: I am not interested in any operation unless defendants offer evidence to show it will reasonably improve the condition.

Mr. Weingand: I am not offering any operation at this time.

Mr. Pillsbury: All right.

Q. (By Mr. Weingand): And you say Dr. Taylor tells you he thinks it is the sciatic nerve that gets pinched. Does it pain you?

A. When I bump myself it feels like electricity going down my leg.

(Testimony of Fred E. Laird.)

Q. Your back?

A. My hip. Sometimes it comes on—I don't know how it comes on.

Q. How long does this pain last?

A. It varies from four to eight days.

Mr. Weingand: I have no other questions.

Mr. Pillsbury: Mr. Brown, anything?

Mr. Weingand: One more question: What do you believe, Mr. Laird, would be the reasonable value of the services of a person who worked as you worked on this house of yours from September until the present time? A. \$100.00.

Mr. Fleming: I will object, no foundation has been laid which would establish Mr. Laird as an expert.

Mr. Pillsbury: Objection overruled; if Mr. Weingand wants to rely on his opinion, I am willing to take it.

Mr. Weingand: His opinion is better than no opinion. I am sure he would be honest. He has had building experience in a supervisory capacity.

A. \$150.00; \$1.50 an hour.

Mr. Pillsbury: \$150.00 per month?

A. \$1.50 per hour for 100 hours.

Q. How much a week do you think such a person can reasonably earn in the open labor market?

A. In the condition I am in?

Q. Yes.

A. Very little, because they would not have him.

Q. (By Mr. Weingand): How much?

(Testimony of Fred E. Laird.)

Mr. Fleming: I object again on the ground there is no indication he could work 40 hours over a period of time.

Mr. Pillsbury: However, I think Mr. Weingand has his answer.

Mr. Weingand: You don't have your answer.

Mr. Pillsbury: I have sufficient for my purposes.

Mr. Weingand: Mr. Pillsbury's question was how much per week.

Mr. Pillsbury: Can you give me any more definite amount?

A. About \$15.00 a week.

Q. About \$15.00 a week? A. Yes.

Mr. Weingand: I have no further questions.

Q. (By Mr. Brown): Have you made any attempt to find any other kind of work, other than this food stand you are running?

A. Yes. I tried at the Koehler Furniture Company and they asked where I had been and I had to give references and that led to the subject of my condition and they said, "We don't want you." So several times I have inquired around and received the same answer. I have been told by the other employees of the Kaiser Homes they would give a rigid examination when they are employing.

Q. How long is it since you had medical attention? A. I was examined about a month ago.

Q. By whom? A. Dr. Friedenfeld.

Q. Why were you examined?

A. This spell again.

(Testimony of Fred E. Laird.)

Q. Is that the only time you have been examined, other than examination by the Commission's doctor?

A. Oh, no. I have had Dr. Chaffin, Dr. Taylor constantly.

Mr. Pillsbury: The defendants are the moving parties and if they have any further medical reports to offer I will receive them. It is not worth while asking about what examinations claimant has had in the absence of submission of medical evidence by defendants with reference to them.

Mr. Weingand: At the beginning of the hearing, I raised orally the additional item of my petition for termination of disability. In support of that oral petition, which is now a part of the record, I have offered the report of Dr. Mason. We have interrogated the claimant with reference to his condition, and at this time I wish on behalf of the defendant to authorize the appointment of an individual medical examiner, or examiners, to examine this claimant at the expense of the defendant carriers, and render his report. If your examiner is of the opinion he needs a consultant, he may have it at our expense; if laboratory tests or further x-rays are needed, again they may be had at our expense.

Mr. Pillsbury: Upon the present state of the record I think it is not necessary, and the matter is now submitted for decision.

On the medical showing of a change in condition, defendants have offered the report of Dr. Mason, which concludes with the statement, "it is my im-

(Testimony of Fred E. Laird.)

pression that this patient is not more than 25% disabled at this time.”

In view of the presumption of the continuance of the condition found in the original compensation order until changed, and that this is the only evidence to show change, I am of the opinion that the evidence fails to show any such substantial improvement as would militate against the claimant being substantially disabled at this time. There is still substantial disability, though partial in character.

With reference to whether his wage earning capacity has now improved to a point sufficient to justify any reduction from the sum of \$25.00 a week, I am of the opinion no evidence has been submitted by defendants to establish a present wage earning capacity which is within \$37.50 a week of the earning capacity at the time of injury. As to what a man can earn in the open labor market, who is up to 25 per cent disabled and cannot do physical work 40 hours a week, I am unable to say from the evidence that such man is shown to be able to earn within \$37.50 of the wages at time of injury. The loss of wage earning capacity is still apparently more than that sum.

The petition for reduction or termination of liability is therefore denied without prejudice.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken

in the above matter at the hearing held on August 19, 1946.

/s/ HELEN G. SCHULKE,
Reporter.

EXHIBIT A

[Letterhead]

Christopher Mason, M.D.
2965 Wilshire Boulevard

August 1, 1946

Liberty Mutual Insurance Co.

714 South Hill St.

Los Angeles 14, California.

Re: Fred Laird, Emp: Pacific Naval Air Base, In-
jured: December 2, 1941, February 13, 1942.

Attention: Miss McDonald.

Gentlemen:

Mr. Laird reported to this office today relative to two separate injuries the first one he blames for his trouble mainly, on December 2, 1941 at which time while working on Johnson Island in the Pacific he lifted a crane and felt a sudden pain in the right low back region running down in the back of the right thigh. He states that he had very little medical attention and was immediately shipped to Pearl Harbor, and at the time of the disaster of December 7th began work as a construction foreman although he was hardly able to get around, and continued this

Exhibit A—(Continued)

until February 13th at which time he slipped on some oil and exacerbated the same condition he was already suffering with to a point where he could no longer do anything and was shipped home to the mainland.

Subsequently, he states, that he was operated on by Dr. G. Mosser Taylor July 9, 1942 for a herniated right lumbosacral disk, and limped around for about a year after that before he could walk with any degree of ability. Since that time, he states that he has done nothing but some chauffeuring and buying real estate and property, fixing it up and selling it. Recently he states that he has bought some kind of a vegetable stand and his wife is running it, and that he runs the business end of it and looks after the books, and things like that.

His complaints are today that he can't do any work, because if he turns or twists in a certain way he will get a spell of pain which will cause him to be disabled totally for three or four days and he has to use a heat lamp on it. He states that these spells may happen once a month or something like that. He says that he has been examined by many doctors, has been in the Santa Fe Hospital but nothing has been done since the surgery by Doctor Taylor, whom he last saw two years ago.

Examination—Today reveals a well developed, well nourished adult male with fair musculature, standing erect with no list to either side. On forward bending the patient reaches to within 10 inches

Exhibit A—(Continued)

of the floor, on backward bending the patient refuses to move his back at all, bending his neck backward only, stating that pain at the lumbosacral joint is the reason why he cannot go back any further. Left and right bending are 35° —the patient complaining that it hurts more on going to the left. Examining the local area, there is a transverse incision approximately 5 inches long at the lumbosacral joint. The musculature palpated beneath the skin feels normal—no muscle spasm. The only place that the patient complains is on direct palpation of the middle of the scar, he jumps no matter how hard or how deep the palpation, or how light, or how easy. Lower extremities: Calf measurement: 13 and $\frac{3}{8}$ over 13 and $\frac{3}{8}$; patient denies all paresthesias, hypesthesias or anesthetics in the lower extremities. He states that he did have some prior to the surgery and for some time afterwards in the lateral aspect of the right calf.

Due to the fact that the patient had not been x-rayed for over a year, x-rays of the lumbosacral joint were made and revealed a slightly narrowed disk space and on the lateral view it is seen that the sacral portion of the bone is built up so that it almost approximates the inferior edge of the spinous process of the 5th lumbar vertebra. There is a clear cut line of pseudoarthrosis at this level showing that the tempted fusion by Doctor Taylor is not in effect. There is no reaction on either side of this line however and one would not think that there

Exhibit A—(Continued)

should be any cause for too much distress. Inasmuch as we frequently see fused spines, or supposedly fused spines with pseudoarthrosis, in which the patient is under the impression he has a fused back and he gets along perfectly well.

Impression: It is my impression that this man had a probable herniated disk, and which on a private patient would have resulted in a successful cure after the surgery.

The man is making the most of his disabilities. Casual examination of his hands and their musculature would lead me to think that he is doing considerable in the way of activity. Judging from the lack of objective findings today other than the unwillingness to bend back with any of the joints of the spine, which is certainly not rational, granted that everything was wrong at the lumbosacral joint, in view of the fact that there is no calf atrophy, and that all leg complaints have disappeared, it is my impression that this patient is not more than 25% disabled at this time.

The question of possible further therapy was discussed with the patient and he stated that he doesn't want anything whatsoever done. It would seem to me that a man only 35 years old, if he were having any considerable amount of difficulty at the lumbosacral joint, it would be perfectly amenable to a fusion and the patient should be willing and able to undertake it without any great amount of risk.

This would be a foolish recommendation on a

Exhibit A—(Continued)

compensation patient however, inasmuch as I have never seen one yet who would admit that he had as good a back as this man has today.

Very truly yours,

/s/ CHRISTOPHER MASON

cm/mf

Filed Aug. 23, 1946.

Copy forwarded to Washington.

Received Aug. 23, 1946, District No. 13.

Federal Security Agency—Bureau of Employees' Compensation—Before Warren H. Pillsbury, Deputy Commissioner, 13th Compensation District.

Case No. DB-P-1-715 Injury of 12-2-41

Case No. DB-P-61-65 Injury of 1-13-42

FRED F. LAIRD,

Claimant,

vs.

CONTRACTORS, PACIFIC NAVAL AIR
BASES, PACIFIC BRIDGE COMPANY,
Employers.

LIBERTY MUTUAL INSURANCE COMPANY,
U. S. FIDELITY & GUARANTY CO.,
Insurance Carriers.

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, Bureau of Employees' Compensation, Federal Security Agency, in the Grand Jury Room, U. S. Post Office Building, Los Angeles, California, on Monday, November 22, 1948, at 9:30 o'clock A.M.

Appearances

Claimant present in person, and represented by Mr. L. R. DUBIN, attorney at law, appearing for Charles Blek, claimant's attorney.

Defendants, Contractors, Pacific Naval Air Bases, and Liberty Mutual Insurance Company, represented by Mr. CLAUDE F. WEINGAND, attorney at law.

Defendants, Pacific Bridge Company, and U. S. Fidelity & Guaranty Company, represented by Mr. VIRGIL L. BROWN, attorney at law.

Mr. Pillsbury: Hearing on petition for termination of liability under award in two cases which have been consolidated heretofore for hearing because of their interlocking nature.

Claimant is present and is represented by Mr. Dubin, appearing for Mr. Blek, claimant's attorney of record. Defendants, Contractors, Pacific Naval Air Bases, and Liberty Mutual Insurance Company are represented by Mr. Claude F. Weingand, attorney at law. Defendants, Builders Pearl Harbor Dry Dock No. 4 and U. S. Fidelity & Guaranty Company are represented by Mr. Virgil L. Brown, attorney at law.

In the first of these two files, DB-P-1-715, involved herein, Fred F. Laird vs. Contractors, Pacific Naval Air Bases, and Liberty Mutual Insurance Company, compensation order was entered on November 4, 1942, awarding to claimant compensation for temporary total and partial disability as therein stated for injury of December 2, 1941 at Johnston Island, the case coming within the provisions of the Defense Bases Compensation Act. This awarded him compensation for total disability from December 5th

to and including December 12, 1941, in the sum of \$28.57.

It was further found that on January 13, 1942 claimant further injured himself increasing the same disability by further injury while in the employ of Builders Pearl Harbor Dry Dock No. 4, and was thereafter disabled from labor by reason of the joint effect of the two injuries. Compensation was awarded for one-half of the weekly rate against the defendants herein until the further order of the Deputy Commissioner.

An order fixing medical expenses was filed on April 16, 1943, and an order denying petition for modification and termination of award was denied by order of September 16, 1946.

In the other file, DB-P-61-65, Fred F. Laird vs. Builders Pearl Harbor Dry Dock No. 4, and U. S. Fidelity & Guaranty Company, a similar compensation order was entered on November 4, 1942, awarding to claimant compensation for one-half his disability at the rate of \$12.50 a week until further order for the injury of January 13, 1942, reference being made to the earlier injury in which the other half of the weekly payments were ordered.

An order fixing medical expenses was filed on April 16, 1943, and an order denying petition for termination of liability was filed on September 16, 1946.

Defendants, Contractors, Pacific Naval Air Bases have filed herein their petition for termination of liability on November 1, 1948. Defendants Builders

Pearl Harbor Dry Dock No. 4 and U. S. Fidelity & Guaranty Company simultaneously filed a similar petition. Claimant was apprised of the filing of these petitions, and by letter of his attorney, Mr. Blek, of November 5, 1948, stated that the petitions were opposed. The matter therefore comes on for hearing upon the consolidated transcript on both of said petitions.

Mr. Weingand, do you desire to elaborate on your petition for the record?

Mr. Weingand: Mr. Pillsbury, I take it that the statement which you have just made and which your good reporter is transcribing is but a resume of what the proceedings have been to date.

Mr. Pillsbury: That is correct.

Mr. Weingand: I take it that each of the decisions and the terms thereof speak for themselves.

Mr. Pillsbury: That is correct.

Mr. Weingand: And you are only attempting to summarize what had transpired before, in making the statement.

Mr. Pillsbury: That is correct.

Mr. Weingand: On behalf of Contractors, Pacific Naval Air Bases, and its compensation insurance carrier, Liberty Mutual Insurance Company, we stand on the allegations as they are set out in each and all of the paragraphs of the petition to terminate. I do not think at this time any further elaboration would be of assistance or help to you.

Mr. Pillsbury: Mr. Brown?

Mr. Brown: I would like to make the same state-

ment since the facts and orders are similar in both cases.

Mr. Weingand: Mr. Pillsbury, I do not know what the attack will be, but can it be understood that any objection which I make shall be deemed to also be the objection of the U. S. Fidelity & Guaranty Company and its assured, unless the contrary is stated for the record?

Mr. Pillsbury: Is that satisfactory to you, Mr. Brown?

Mr. Brown: Yes.

Mr. Weingand: And the situation should be the same with reference to any objection by Mr. Brown, as attorney for the U. S. Fidelity & Guaranty Company. I thought that would perhaps shorten the time of this hearing.

Mr. Pillsbury: Mr. Dubin, do you wish to make any preliminary statement?

Mr. Dubin: Just that Mr. Weingand stated he did not know what the line of attack would be. We do not intend to attack anything that is stated herein. We also stand upon the record and any statement or written record that is made here. It is my understanding that any attack upon the record is to be set forth by the gentlemen here.

Mr. Pillsbury: Mr. Laird, do you still claim you are not recovered from your injury?

The Claimant: Yes.

Mr. Pillsbury: And you are still suffering a loss in wage earning capacity because of your two injuries?

The Claimant: Yes.

Mr. Pillsbury: With reference to one point made in the petition for termination, I will make a statement at this time. The petitions assert that each of said defendants has now paid \$3,750 in compensation payments, or more; that the total liability of defendants together is limited to \$7,500, under Section 14 (m) of the Longshoremen's and Harbor Workers' Compensation Act, and therefore they are not under obligation to make further disability payments. I will rule against this contention and have so advised the parties heretofore. It is my understanding that Section 14 (m) imposes a liability of \$7,500 against each employer separately from the other, inasmuch as we are dealing with two separate injuries at different dates and in different employments, even though their combined effect cooperated to produce the disability since the last jury. I am advised by the Chief Counsel of the Bureau that he follows the same construction of the Longshoremen's and Harbor Workers' Compensation Act.

Mr. Weingand: Mr. Pillsbury, inasmuch as you have already expressed yourself with reference to what the decision will be in that regard, and in order that the record may be perfected for an appeal, both defendants respectfully request the issuance by you of an order in each of these cases, disallowing the petitions, and that in the order you make a specific finding that each carrier is liable for compensation payments in each case not to exceed \$7,500, or until termination of disability, or further order of the

Commission. The reason we specifically request such an order is that then the point is squarely at issue and can be passed on in an appeal.

Mr. Pillsbury: I will give you a specific finding in my decision on that ground.

Mr. Weingand, you may proceed with your evidence on your contention that Mr. Laird has recovered from his injury.

Mr. Weingand: Would you be kind enough, Mr. Pillsbury, to give me from your file the date of the last hearing?

Mr. Pillsbury: August 19, 1946. Just a moment, Mr. Weingand: I wish the record now to show the date to which compensation is paid in accordance with the compensation orders by each set of defendants, and the gross amount paid.

Mr. Weingand: Mr. Pillsbury, I am handicapped in giving you the exact amount of compensation paid for the reason that I have had the insurance company's file for several weeks. I think I can state, and Mr. Laird can verify it, that compensation has been paid, and is being paid by Liberty Mutual currently.

The Claimant: Yes.

Mr. Pillsbury: Mr. Brown?

Mr. Brown: Our total is \$4,425.

The Claimant: That is correct.

Mr. Brown: That is through November 15, 1948.

The Claimant: Correct.

Mr. Weingand: I think the record should show, on behalf of both carriers, and the employers they

respectively represent, that any payments made by the carriers, or either of them, subsequent to the payment of \$3,700 by each carrier, is made without any admission of liability and under protest.

Mr. Pillsbury: I never regard a payment as an admission of liability where liability is otherwise contested, from motives of public policy. I wish to get cooperation from the insurance companies in continuing payments where a controversy exists and will not hold it against them as an admission.

FRED F. LAIRD

claimant, testified as follows:

Q. (By Mr. Weingand): Mr. Laird, have you been employed since the date of the last hearing, August 19, 1946?

A. Only in my produce market?

Q. (By Mr. Pillsbury): You have been employed? A. Yes, in my produce market.

Q. (By Mr. Weingand): Where is that?

A. 10802 Hawthorne Boulevard, Inglewood.

Q. Do you own the produce market?

A. Yes, sir.

Q. When did you buy it?

Mr. Pillsbury: Just a moment. Let me clear one point: Have you been making as much as \$300 a month in that market? A. No, sir.

Mr. Pillsbury: All right.

Mr. Weingand: Is that the wage as of the date of injury?

Mr. Pillsbury: Yes.

(Testimony of Fred F. Laird.)

Mr. Weingand: The decision against my company?

Mr. Pillsbury: Yes. In the Liberty Mutual case the actual monthly wage at the time of injury was found to be \$300 a month. In the U. S. Fidelity & Guaranty case, the wages at time of injury are stated in the compensation order to be \$100 a week. Proceed.

Q. (By Mr. Weingand): When did you acquire the produce market?

A. I believe about something over two years ago.

Q. You sell vegetables and fruits?

A. Yes.

Q. How many employees do you have, other than yourself?

A. I don't have any employees steady other than I have a boy that helps me and a woman that helps me.

Q. How many hours a day are you open?

A. The store is open from 9:00 to about 6:30.

Q. I take it that is true with reference to the produce market? A. Yes.

Q. How many days a week?

A. Seven days a week.

Q. (By Mr. Pillsbury): How much have you been earning a week on an average, say, over the last six months?

A. I would say an average of about—mostly that is figured on a monthly basis.

Q. How much a month?

(Testimony of Fred F. Laird.)

A. \$140. Here is \$147.96 for the month—this last month.

Mr. Weingand: That is the month of October?

A. Yes, October.

Q. (By Mr. Pillsbury): Have you invested any capital in the market?

A. No, only I did put in a frozen food box.

Q. That does not represent any appreciable expense or invested capital? A. No.

Q. (By Mr. Weingand): What did you average, Mr. Laird, for the month of September, 1948?

A. \$112.28.

Q. Will you take us back six months, if you please? A. Six months back?

Q. I mean month by month.

A. You have September; August \$147.16; July \$186.26, and you have June \$38.64; and May \$129.63; you have April \$99.69; March \$47.57; and February \$89.94.

Q. January? A. January \$116.91.

Q. December?

A. That is over in a different book here now. This bookkeeper has got it all balled up.

Q. Mr. Laird, I take it you have been testifying from certain books and records you have produced in response to a subpoena served on you?

A. Yes.

Q. May I please see those records?

A. Yes.

Q. Mr. Laird, in arriving at these figures which

(Testimony of Fred F. Laird.)

you have given, how much have you charged to the business for your own services, showing either as a drawing account or salary, or otherwise?

A. Nothing.

Q. (By Mr. Pillsbury): Do you have any other income from labor?

A. No, just this compensation insurance.

Q. And your earnings in the market?

A. Yes.

Q. (By Mr. Weingand): Mr. Laird did you bring with you your copy of your return to the Bureau of Internal Revenue? A. Yes.

Q. With reference to the tax paid for the calendar year 1947? A. Yes.

Q. May I see it, if you please? A. Yes.

Mr. Pillsbury: While you are looking at that, Mr. Laird, has there been any improvement in the condition of your back in the last two or three years? A. No, sir.

Q. Has it gotten any worse?

A. No, sir. Sometimes I thought it was for a while and I eased up on my activities.

Q. How long would you say the impairment of your back has been stationary?

A. I would say nearly ever since I left the hospital.

Q. When was that?

A. That was back, I believe, in 1943.

Q. It has been stationary for the last five years?

A. Yes, something like that.

(Testimony of Fred F. Laird.)

Q. Have you tried any other employment in the last year? A. No.

Q. (By Mr. Weingand): Now, Mr. Laird, have you done any work or earned any money at any trade, occupation or work other than that which you devoted to the operation of this produce market?

A. No; only I oversaw the painting of a house for a friend of mine, and I received very little for that. He paid his boys and I sort of supervised it.

Q. (By Mr. Pillsbury): When was that?

A. It was last year some time.

Q. How long did that last?

A. Oh, about a week.

Q. How much did you receive?

A. I think I received \$25 for my trouble.

Q. (By Mr. Weingand): Have you done any carpenter work of any kind since the date of the last hearing? A. No, sir.

Q. Have you done any painting yourself of any kind? A. No.

Q. Didn't you just recently paint the interior of a house? A. No.

Q. Have you done any work of any kind other than carpentry, painting or the produce market since the date of the last hearing? A. No, sir.

Mr. Dubin: I don't think he stated he had done any other work.

Mr. Weingand: The question was certainly ambiguous, compound, and leading, counsel. Q. Have you done any work other than supervising the paint-

(Testimony of Fred F. Laird.)

ing of a house, and operating your produce business, since the date of the last hearing? A. No, sir.

Q. (By Mr. Pillsbury): Mr. Laird, you appreciate you are still under oath? A. Yes, sir.

Q. (By Mr. Weingand): Mr. Laird, you were convicted of a felony, is that a fact?

A. Yes, sir.

Mr. Dubin: May I ask just what bearing that would have upon the case at hand?

Mr. Weingand: Counsel, the question is a preliminary one. If in your opinion I do not tie it up, please make the objection at that time, but I might state that the question is a proper one even at the present time for the purpose of impeachment.

Q. Mr. Laird, the offense for which you were convicted was contributing to the delinquency of a minor, is that correct? A. Yes.

Q. Did you make application for probation in connection with that criminal proceeding?

A. Yes.

Q. And probation was granted? A. Yes.

Q. Who was the probation officer to whom you reported and who reported in your behalf?

A. Mr. Haig, I believe.

Mr. Pillsbury: How do you spell it?

A. H-a-i-g, I believe.

Q. (By Mr. Weingand): Do you recall a Perry L. Douglas, Deputy Probation Officer?

A. Yes.

Q. Who interviewed you? A. Yes.

(Testimony of Fred F. Laird.)

Q. State whether or not on the occasion of his interview with you concerning your request for probation——

Mr. Pillsbury: What was the date of the interview?

Mr. Weingand: October 2, 1946. ——whether you stated to him that you averaged about \$500 a month from your work and business.

A. I don't remember that, of stating that to anyone.

Q. Would you state that you did not so advise or inform or tell Mr. Perry L. Douglas?

A. I don't think I did. No, I know I did not because I was not making it.

Mr. Weingand: At this time, Mr. Pillsbury, I offer in evidence the record of the Superior Court of the State of California, in and for the County of Los Angeles, in case No. 106,667, entitled People vs. Fred Laird, and I will refer specifically to page 2 of the probation officer's report of October 2, 1946. I will call counsel's attention to the first paragraph in that probation report.

Mr. Pillsbury: If the offer is limited to the paragraph mentioned I will receive the paragraph in evidence and read it into the record. This appears on page 2 of the document entitled "Probation Officer's Report, Court No. 106,667, filed by Perry L. Douglas, Deputy." Going back to the last line on the preceding page, following reference to a back injury in the Hawaiian Islands, the following ap-

(Testimony of Fred F. Laird.)

pears: "Since that time he has been building houses and selling them and working also as a carpenter. This defendant states that he averages about \$500 per month from his work and business." Is there anything else you wish read into the record?

Mr. Weingand: Not at this time, Mr. Pillsbury.

Mr. Pillsbury: Mr. Laird, I want at this time to emphasize to you the necessity of your telling the exact truth. I am not implying that I have yet decided that you are not, but if you are caught in any material fabrication it will cast grave doubt upon all of your statements. A. Yes, sir.

Mr. Weingand: When you read this paragraph, Mr. Pillsbury, into the record, did you read it \$500 or \$300?

The Reporter: \$500.

Q. (By Mr. Weingand): Did you tell the probation officer on or about October 2, 1946 that your wife earned \$80 per month from her work?

A. I don't remember telling him anything about my wife.

Q. Do you remember telling him you owned a 1940 Chevrolet club coupe?

A. I don't remember telling him, but I do.

Q. Isn't it a fact your wife was earning about \$80.

Mr. Pillsbury: Earnings of the wife would not be material.

Mr. Weingand: This is testing his recollection and in the nature of impeachment.

(Testimony of Fred F. Laird.)

Mr. Pillsbury: It is not necessary to go into collateral matters to test it.

Q. (By Mr. Weingand): Did you tell the probation officer at the date which we have related that you had just sold the place where you were located at the time of the offense? A. I believe so.

Q. Did you tell him you had bought another house? A. Yes, I had.

Q. Where was it located?

A. 1013 Rosewood, Inglewood.

Q. Did you tell him you had sold the court for \$13,500?

A. I did not tell him I bought a court. I bought a house.

Q. Did you tell him there was a balance of \$8,500 due on it? A. I believe so.

Q. Did you tell him you had about \$8,000 in savings?

A. No, I did not, because I didn't have.

Q. Did you tell him you did have?

A. I don't believe that I did.

Q. Is that your best recollection now?

A. Yes, it is.

Q. How much did you have in savings on or about October 2, 1946? A. I don't remember.

Q. What is your best recollection?

Mr. Pillsbury: That is getting a little remote; that is two years ago. I am interested primarily in his earning capacity at about the time of the filing of the application for termination of liability.

(Testimony of Fred F. Laird.)

Mr. Weingand: You see, Mr. Pillsbury, we have had no way of interrogating this man since the date of the last hearing, and that was in 1946, and all of these——

Mr. Pillsbury: I still do not wish to build up a long record by inclusion in it of matters quite remote if it can be avoided.

Q. Have you owned this produce market throughout the whole period?

A. I have owned it about—since about the time I bought the house on Rosewood.

Q. (By Mr. Weingand): Do you own any property other than the house? A. No.

Q. Now, at the time of the happening of these accidents you were married, were you?

A. Yes.

Q. What was your wife's name?

A. Lora Laverne.

Q. And your wife has sued you for divorce?

A. Yes, about the time of this termination or you notified Mr. Pillsbury.

Mr. Pillsbury: What is the date of the complaint?

Mr. Weingand: I was just trying to find it. About the 30th day of December, 1947.

A. That was the date it was filed. The divorce was granted July 22nd of this year.

Mr. Pillsbury: Interlocutory decree?

A. Yes.

(Testimony of Fred F. Laird.)

Q. (By Mr. Weingand): In her favor, against you?
A. Yes, I conceded it to her.

Q. Mr. Laird, do you have a cash register at your place of business?
A. Yes.

Q. When you make a sale of produce, is it customary, do you always ring up the money in the cash register?
A. Yes.

Q. During the pendency of the divorce proceedings your wife had you cited in an order to show contempt, or an order to show cause in re contempt?

A. Yes.

Q. And in connection with that citation your wife filed with the Clerk of the Superior Court, in and for the County of Los Angeles, an affidavit stating or setting forth that your total monthly income was \$500 a month; isn't that correct?

A. That is right, but my books showed different, and the judge ruled against her and threw it out.

Mr. Weingand: Have you seen this, counsel?

Mr. Dubin: No, I have not. However, I do not particularly see, counsel, that the wife's affidavit as to what she believed Mr. Laird's earnings to be, how that would be pertinent or material in this case.

Mr. Pillsbury: Are you making an objection?

Mr. Dubin: Yes, I make it on the ground it is immaterial and irrelevant.

Mr. Brown: Your Honor, on that question, I think it is generally conceded at that time they were husband and wife and she knew, must have known approximately what the earning capacity of her husband was.

(Testimony of Fred F. Laird.)

Mr. Pillsbury: The obvious ground for an objection would be it is hearsay. Is there any reason why the lady cannot be brought in in person to give her information?

Mr. Weingand: Her whereabouts are unknown to either of the defendants, and I take it we have an official record of the Superior Court and we expect to offer the entire record as an exhibit for the defendants in this proceeding, and it is a matter of which this Commission can take judicial notice.

Mr. Pillsbury: With reference to the affidavit of the wife in the other proceeding, the evidentiary weight is not strong because of it being hearsay, but we are not bound by the formal rules of evidence. In view of the showing that you cannot locate her, I will overrule the objection.

Offers in evidence document entitled "Wife's Questionnaire; Affidavit for order to show cause in re attorneys' fees, court costs, alimony pendente lite; allowance for support and/or custody of child, and restraining order" in the proceeding entitled Lora Laverne Laird vs. Fred F. Laird, D-352,866, affidavit being sworn to by Lora Laverne Laird, the relevant portion of the affidavit being question 6 (a), What is your total income from all sources \$70.00 net, and 6 (b) of your husband \$550.00; 7 (a) what was the net income from all sources last year, specify sources: Of yourself \$250.00; of your husband approximately \$6,600.00.

Is there anything else?

(Testimony of Fred F. Laird.)

Mr. Weingand: That is all, Mr. Pillsbury, with reference to that particular phase of this case. I might say, Mr. Pillsbury, that that affidavit of the wife tends to confirm this statement we contend this man made to the probation officer in October of 1946.

Q. Mr. Laird, are you still on probation?

A. Yes.

Q. To whom do you report?

A. To Mr. Haig.

Q. When you were convicted of this offense you were fined \$500.00? A. Yes.

Q. Payable within 24 hours? A. Yes.

Q. From what source did you get the \$500.00?

A. From what we had from selling the house.

Q. Do you have a checking account at the present time? A. About \$7.79.

Q. May I see that. What branch?

A. Security-First National, Inglewood.

Q. How long have you been a depositor there?

A. For a number of years.

Q. Within the last year what has been your average monthly balance?

A. Very little, something like that, \$7.79.

Q. How do you pay your bills? A. Cash.

Q. At the store? A. Yes.

Q. Do you have any other accounts?

A. No.

Q. Do you have any savings account?

A. Absolutely not.

(Testimony of Fred F. Laird.)

Q. Do you have any bonds? A. No.

Q. And you own no property at the present time?

A. I own the house at 1013 Rosewood and it is for sale, and the produce market, and the 1940 Chevrolet club coupe.

Mr. Weingand: I have no further questions.

Q. (By Mr. Brown): This amount which you say you earned net each month in your produce business, is that after all your expenses have been paid?

Mr. Weingand: Would you have any further need, counsel, for these records? There are two men from the Superior Court here.

Mr. Dubin: Not for this one.

(The question was read.)

A. Yes.

Q. (By Mr. Pillsbury): The amount you mention is net? A. Yes.

Q. (By Mr. Brown): What expenses are included?

A. I pay this woman a dollar a day when she works and I pay \$5.00 a day on Sundays for a boy that helps, and my frozen food bill, and my fresh vegetables.

Q. Your own personal expenses are deducted?

A. No.

Q. Then your personal expenses come out of this? A. Yes.

Mr. Brown: Do you have a copy of Dr. DeWard Jones' report dated October 27, 1947? I

(Testimony of Fred F. Laird.)

know I am late but I doubt if you have received a copy of it; I have the original here. [24]

Mr. Pillsbury: Mr. Brown, why offer medical reports? Your petition, if I remember correctly, did not allege any change in condition, but was solely on the contention that claimant's earnings were higher than at the time of injury.

Mr. Brown: I have it in the file, and I think it should become a part of that file in the event an appeal is taken.

Mr. Pillsbury: There may be considerable harm to claimant if you introduce any issue here not raised in your petition.

Mr. Brown: I am not raising any particular point on the medical report at this time. I think possibly we have discussed this matter. I am not raising any particular point, but it is a part of the file and you have never been given a copy of it.

Mr. Weingand: Mr. Brown, if I remember correctly we have several medical reports subsequent to the date of the last hearing. Am I correct?

Mr. Pillsbury: I will add it to the file then.

Mr. Weingand: I think it should be withdrawn.

Mr. Pillsbury: Withdrawn.

Mr. Weingand: There is no contention at this time the man's disability has terminated.

The defendant Liberty Mutual Insurance Company rests.

Mr. Brown: The U. S. Fidelity & Guaranty Company rests.

(Testimony of Fred F. Laird.)

Mr. Weingand: That is from this witness.

Mr. Pillsbury: You have other witnesses? [25]

Mr. Weingand: No, sir, but I may want to further examine Mr. Laird, assuming his counsel brings out other facts.

Mr. Pillsbury: Do you rest, Mr. Brown?

Mr. Brown: Yes.

Q. (By Mr. Weingand): Do you know the address of your wife?

A. 1013 Rosewood, Inglewood, phone Orchard 72638. She told me some insurance man was down there trying to get her to come in.

Mr. Weingand: I ask that voluntary statement be stricken from the record.

Mr. Pillsbury: Denied.

Mr. Brown: It is strictly hearsay.

Mr. Pillsbury: You have just succeeded in getting into evidence a hearsay affidavit.

Mr. Dubin, take the witness.

Q. (By Mr. Dubin): Mr. Laird, at the time that Mr. Perry L. Douglas interviewed you in reference to your conviction in the other case that was brought out by counsel, do you remember saying at any time that you earned \$500 a month from your business? A. No, I do not.

Q. Do you remember saying that you actually built any houses? A. No.

Q. You have testified that you supervised the painting [26] job; in that particular instance did you do any work? A. No.

(Testimony of Fred F. Laird.)

Q. In other words, you could do painting work without actually working yourself? A. Sure.

Q. Is it possible that a house could be built without a person himself doing the work?

A. Certainly.

Q. Were you ever arrested before that time?

A. No, sir.

Q. Were you worried at the time you were arrested?

Mr. Weingand: Objected to as immaterial.

Mr. Dubin: It was brought out by counsel and I am asking as to his state of mind.

Mr. Pillsbury: I do not like to get drawn into a criminal case, but you are allowed to rebut unfavorable testimony.

Mr. Dubin: I am merely attempting to show the state of mind of Mr. Laird at the time, which I believe under the rules is admissible.

Mr. Brown: We have the date of the report of the probation officer and the interview. May I ask what date you were arrested?

A. I don't remember.

Mr. Pillsbury: You are referring to his state of mind at [27] the time of the interview, not at the time of the commission of the offense?

Mr. Dubin: Yes.

Mr. Pillsbury: Proceed.

Q. (By Mr. Dubin): Were you worried at the time you were arrested—strike that, please. Were

(Testimony of Fred F. Laird.)

you worried at the time you were interviewed by Mr. Douglas in connection with this crime?

A. Yes, I was, and my back was giving me considerable trouble in there, too.

Q. Would you say you were thinking as clearly as you would ordinarily be thinking?

A. No, sir.

Q. Were you a little excited?

A. The main thought was trying to get out of there.

Q. In other words, you were excited?

A. Yes.

Q. Is it possible that what you stated may have been inaccurately stated by you?

A. If that is what I stated it certainly was inaccurate.

Q. Now in this order to show cause and the affidavit as to your earnings, I believe the affidavit states that according to your wife you were making \$550 a month. At the time were your wife's feelings toward you of a friendly nature?

A. Not by a long shot. [28]

Q. In other words, in this particular type of case, they were not friendly?

A. She was trying to get everything she possibly could get.

Q. I also point to the husband's questionnaire in the same record of the Superior Court in the same case, question 2 (b), what is your present

income, answer \$100. Did you make that statement?

A. That is right, approximately that.

Q. In other words, in 2 (b), in the husband's questionnaire, there was a wide difference in what your wife claimed you made, and what you claimed?

A. Yes.

Mr. Weingand: I do not want to unnecessarily object, but you are testifying in practically every question, they are leading, and the last was argumentative and you answered it yourself. I ask that it be stricken.

Mr. Pillsbury: Be more careful about your questions.

Q. (By Mr. Dubin): Yes. I point to a copy of a minute order, decreed by the court in the same case, in which the judge decreed that \$45.00 a month was to be paid by you for the support of your child in this particular action; is that true?

A. That is true, and that is all.

Q. That was a copy of a minute order in the contempt proceeding? [29]

Mr. Brown: Just a minute. There was no part of that referred to except the affidavit.

Mr. Pillsbury: The bars are down on hearsay on this particular matter.

Mr. Weingand: The order speaks for itself.

Mr. Pillsbury: It is a fact there was an order to that effect, is it?

Mr. Weingand: I do not know.

Mr. Pillsbury: Show me the order.

(Testimony of Fred F. Laird.)

A. There was an order to pay \$45.00, and that was all I was ordered to pay.

Mr. Weingand: I ask that be stricken; the order will speak for itself.

Mr. Pillsbury: The record in the divorce proceeding contains a copy of a minute order dated January 15, 1948, on order to show cause re alimony pendente lite, attorneys' fees, support and maintenance of child and restraining order, which awarded the custody of the minor child to the plaintiff and orders the defendant Fred F. Laird to pay to the plaintiff \$22.50 semi-monthly on the 1st and 15th days of each month beginning January 15, 1948, for support of the minor child; other matters continued to the time of trial.

Mr. Weingand: Is that the order to which you refer?

Mr. Dubin: Yes.

Mr. Pillsbury: There has since been an interlocutory [30] decree, I am informed.

A. May I clarify the matter just a little?

Mr. Pillsbury: Just a moment.

A. In the meantime they transferred it to Inglewood and it is probably in the Inglewood file, and at that time I was ordered to pay \$45.00 for the boy.

Mr. Pillsbury: In this connection I find in the file a copy of minute order of March 22, 1948, purging defendant of contempt and fixing arrearage in the sum of \$242.50, apparently for attorney's fees

(Testimony of Fred F. Laird.)

—correction, I find in the file findings of fact by the court commissioner and order dated May 10, 1948, find arrearage due on April 26, 1946, was \$75.00 on attorney's fees, and \$195.00 on the monthly payments on the house. This order also recites that defendant's net income from the operation of his fruit and vegetable stand was \$47.57 in March, 1948, and \$99.69 in April, 1948; that defendant had made all the payments for child support ordered on January 15, 1948, being \$45.00 a month; that defendant has not had the ability to comply with the order of January 15, 1948, excepting to the extent that he has complied with the payments for child support. Copy of minute order of May 10, 1948, dismisses the contempt matter. Interlocutory decree is not contained in the file.

Proceed, Mr. Dubin.

Q. (By Mr. Dubin): Your grocery and vegetable establishment, [31] is it a large place?

A. No, it is only a produce market, no grocery.

Q. Is it small?

A. It is 20 feet long and eight feet wide.

Q. In the ordinary course of business is it customary in this particular type of business to pay your bills in cash?

A. Yes; in fact, you have to, they won't trust you.

Q. Does your back still trouble you?

A. Yes.

(Testimony of Fred F. Laird.)

Q. In what respect?

Mr. Pillsbury: There is no issue being raised on that.

Q. (By Mr. Dubin): Approximately what were you earning in the way of salary at the time of your injuries?

Mr. Pillsbury: That is covered by the compensation order. I have stated for the record the contents of the compensation orders.

Q. (By Mr. Dubin): What are your earnings now from this vegetable stand and market?

A. Around \$100.00 a month, something like that, average.

Q. How many days a week do you work?

A. I am there about six days, part of the time.

Q. How many hours day?

A. From four to six, eight hours.

Q. Do you do any heavy work?

A. No, sir. [32]

Q. Why not?

A. On account of my back, it will not allow it. I can't stand on my feet.

Mr. Weingand: Again we are getting into the realm of the disability.

Mr. Pillsbury: Yes, strike the last question.

Mr. Dubin: I believe, your Honor, in the examination by counsel that was gone into.

Mr. Pillsbury: I went into one phase of the matter, as to whether disability had reached a permanent stage, as I did not notice in reviewing the com-

(Testimony of Fred F. Laird.)

pensation orders hurriedly a finding that it had reached a permanent stage at the time of the last orders.

Mr. Weingand: My questions, counsel, with reference to how much work he did had to do with his earnings, not with his physical ability to do the work.

Q. (By Mr. Dubin): As to your income, you have records that you were subpoenaed to bring?

A. Yes.

Q. Do you have your income tax return?

A. Right here.

Q. \$2,086.98, for the year 1947, is that a record of your total earnings for that year?

A. Yes.

Q. Did you have any other income? [33]

A. No, any more than the compensation insurance.

Q. Have you been able to live and buy the necessities of life on that income?

Mr. Weingand: Objected to as immaterial.

Mr. Pillsbury: Objection sustained.

Q. (By Mr. Dubin): In this grocery store, as to any future earnings, is there anything that would tell you in the future that you may make more money than what you are making now?

Mr. Weingand: It is probing into the future, crystal gazing, surmise and speculation.

Mr. Pillsbury: Sustained.

Q. (By Mr. Dubin): This income tax return,

(Testimony of Fred F. Laird.)

this is the only income tax return that was filed by you for 1947? A. Yes, sir.

Q. This statement as to your bank account balance, \$7.79 of August 4th, is this the only statement that has come to you as to the balance in the past month? A. Yes, that is the last month.

Mr. Pillsbury: You said August.

Mr. Dubin: That would be for the month of July.

A. That is my only statement and is the only account I have.

Q. You have closed your account since?

A. No, I am holding it just like that. They probably will close it. [34]

Mr. Dubin: That is all.

Mr. Weingand: I have no further questions.

Q. (By Mr. Brown): This property that you owned at the time of the divorce proceeding, was that granted to the wife?

A. No, 50-50 division of all property.

Q. She was awarded one-half? A. Yes.

Q. Is it up for sale?

A. Yes. Not at this time it is not for sale, because I do not have her signature on the listing yet, but it has to be sold to take care of the court costs.

Mr. Brown: That is all.

Mr. Pillsbury: That is all; hearing closed.

Mr. Dubin: During the last five years our office has done considerable work in this case and

(Testimony of Fred F. Laird.)

we have not had any fee since 1943, and I would like to make a request for attorney's fees.

Mr. Pillsbury: Very well. Case submitted.

CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on November 22, 1948.

/s/ HELEN G. SCHULKE,
Reporter.

[Endorsed]: Filed D.C. August 30, 1949.

[Endorsed]: Filed C.C.A. November 8, 1949.

Filed Nov. 30, 1948.

Received Nov. 30, 1948, District No. 13.

Copy forwarded to Washington.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, in the above-entitled case, are the originals filed in this Court,

and that they constitute the Record on Appeal herein, as designated by the Appellant, to wit:

Complaint for Injunction.

Motion of Deputy Commissioner to Dismiss Complaint.

Certificate of Record, Case No. DB-P-1-715.

Certification of Transcripts of Testimony, before Deputy Commissioner, Cases DB-P-61-65 and DB-P-1-715.

Minute Order of September 9, 1949—Ordered Judgment for Plaintiff.

Opinion and Order.

Notice of Appeal.

Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 8th day of November, A.D. 1949.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12396. United States Court of Appeals for the Ninth Circuit. Warren H. Pillsbury, as Deputy Commissioner 13th Compensation District, Bureau of Employees Compensation, Federal Security Agency, Appellant, vs. Liberty Mutual Insurance Company, a Corporation, Contractors, Pacific Naval Air Bases, Pacific Bridge Company, United States Fidelity & Guaranty Co., a Corporation and Builders, Pearl Harbor Dry Dock No. 4, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed Nov. 8, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12396

LIBERTY MUTUAL INSURANCE COMPANY,
a Corp., Contractors, PACIFIC NAVAL AIR
BASES; PACIFIC BRIDGE COMPANY;
UNITED STATES FIDELITY & GUAR-
ANTY CO., a Corp.; and Builders, PEARL
HARBOR DRY DOCK No. 4,

Appellees,

vs.

WARREN H. PILLSBURY, as Deputy Commis-
sioner, 13th Compensation District, Bureau of
Employees Compensation, Federal Security
Agency,

Appellant.

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Appellant, Warren H. Pillsbury, as Deputy Com-
missioner, hereby designates that the whole of the
record, proceedings and evidence be contained in
the record on appeal herein, including the certified
copy of the transcript of the record and proceed-
ings, before said WARREN H. PILLSBURY, as
Deputy Commissioner, 13th Compensation District,

Bureau of Employees Compensation, Federal Security Agency.

Dated: November 2, 1949.

/s/ EDGAR R. BONSTALL,
Assistant U. S. Attorney.

/s/ FRANK J. HENNESSY,
United States Attorney,
Attorneys for Appellant.

[Endorsed]: Filed November 8, 1949.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF

Appellant intends to rely on the following points on appeal:

1. That the District Court erred in denying appellant's motion to dismiss the complaint for an injunction against appellant seeking to restrain the execution of his Compensation Order dated December 1, 1948, denying a petition for termination of the liability under the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (44 Stat. 1424, 33 USCA, Section 901 et seq.)

2. That the District Court erred in denying ap-

pellant's motion to dismiss the complaint because the Compensation Order of the Deputy Commissioner dated December 1, 1948, was in full accordance with the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (44 Stat. 1424) 33 USCA, Section 901, et seq.

3. That the District Court erred in finding that there was only one claim for compensation under the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927.

4. The Court erred in setting aside the Compensation Order of the Deputy Commissioner dated December 1, 1948, finding that there were two injuries and making two separate awards as the findings of the Deputy Commissioner had become final and were not subject to judicial review on December 22, 1948, the date of the filing of the complaint.

5. That the Court erred in substituting its own independent findings of fact for those of the Deputy Commissioner, Warren H. Pillsbury.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ EDGAR R. BONSALE,
Assistant U. S. Attorney,
Attorneys for Appellant.

[Endorsed]: Filed November 8, 1949.